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4 SELECT COMMITTEE TO INVESTIGATE THE
5 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

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12 INTERVIEW OF: RICHARD PETER DONOGHUE

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15 Friday, October 1, 2021

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17 Washington, D.C.

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20 The interview in the above matter was held via Webex, commencing at 10:02 a.m.

21 Present: Representatives Schiff, Lofgren, Murphy, Raskin, and Cheney.

1 Appearances:

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5 For the SELECT COMMITTEE TO INVESTIGATE

6 THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:

7

8 [REDACTED] CHIEF INVESTIGATIVE COUNSEL

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14 [REDACTED] PROFESSIONAL STAFF

15 [REDACTED] CHIEF CLERK

16 [REDACTED] DEPUTY STAFF DIRECTOR

17 [REDACTED] CHIEF ADMINISTRATIVE OFFICER

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19 For the DEPARTMENT OF JUSTICE:

20

21 KIRA ANTELL, OFFICE OF LEGISLATIVE AFFAIRS

22 BRAD WEINSHEIMER, OFFICE OF THE DEPUTY ATTORNEY GENERAL

1
2 For RICHARD PETER DONOGHUE:
3
4 GREG ANDRES
5 CHARLES KLUG
6 KATHERINE SWAN
7 BROOK JACKLING
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9 901 15th Street, NW
10 Washington, D.C. 20005

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2 [REDACTED] This is a transcribed interview of Richard P. Donoghue, conducted
3 by the House Select Committee to Investigate the January 6th Attack on the U.S. Capitol,
4 pursuant to House Resolution 503.

5 Mr. Donoghue, I see that you are present in a conference room with your counsel.
6 Could you please state your full name and spell your last name for the record? I think
7 you are muted, or I can't hear you.

8 Mr. Donoghue. Is that better?

9 [REDACTED] That's it. Perfect. Thank you.

10 Mr. Donoghue. Good morning. My name is Richard Peter Donoghue,
11 D-o-n-o-g-h-u-e.

12 [REDACTED] Thanks very much, Mr. Donoghue.

13 This is a staff-led interview. Members of the select committee may join. I
14 expect some of them will join, and I'll ensure that their presence is noted when they
15 arrive at an appropriate place to stop.

16 My name is [REDACTED], it's [REDACTED] and I'm the chief investigative counsel
17 for the select committee. And with me today in Washington are several investigative
18 counsel to the select committee: [REDACTED] and [REDACTED]
19 [REDACTED].

20 And, Katy, the court reporter, we will make sure that we get those spellings to you
21 so that you have them.

22 [REDACTED] and I are going to be doing the primary questioning today. Don't worry,
23 Mr. Donoghue, you are not going to be hit with six different people questioning you out
24 of the blue. We're going to -- [REDACTED] and I are going to handle the questioning. And
25 some of our members of the select committee, as I said, will join and may also have

1 questions.

2 I understand that two lawyers from the Department of Justice are also present.

3 [REDACTED], if you and [REDACTED] can introduce yourselves for the court reporter.

4 Ms. Antell. Kira Antell, Office of Legislative Affairs.

5 Mr. Weinsheimer. Brad Weinsheimer, Office of the Deputy Attorney General.

6 [REDACTED]. All right. And Greg Andres, I see from Davis Polk, who is

7 Mr. Donoghue's counsel. Greg, do you want to introduce yourself and your team as
8 well?

9 Mr. Andres. Sure. Thanks, [REDACTED], and good morning. Greg Andres from Davis
10 Polk. With me here in New York is Kate Swan and Charles Klug, both from Davis Polk.
11 And on the video is Brook Jackling, who is in D.C. Thank you and good morning.

12 [REDACTED]. Great. Thank you and good morning.

13 I understand that our vice chair, Representative Cheney, is on.

14 Ms. Cheney, are you able to see and hear us?

15 Ms. Cheney. I can see and hear you, [REDACTED]. I'm not sure if you all can see and
16 hear me. I'll try to sort that out if you can't, but good morning to everyone as well.

17 [REDACTED]. Okay. Great. Glad you are here as well.

18 So there's a court reporter, since this is a transcribed interview, and she will be
19 making a verbatim transcript of the interview, please, Mr. Donoghue, answer each
20 question verbally. You know, she doesn't obviously record head nods or shakes. She
21 may ask you to repeat an answer or ask you to slow down. Just keep in mind that she's
22 typing as you speak. I know you've been through this before and know how this works.
23 She'll generate a transcript. It will be sent to your counsel for you to review and ensure
24 that it's accurate before it is finalized.

25 I also understand that Congresswoman Murphy has joined us.

1 Congresswoman Murphy, are you on as well? Are you able to see and hear us?

2 Mrs. Murphy. I am on. I'm going to leave my video off though if that's okay,
3 but I want to verify that it's me.

4 ██████████ Good. We can see and hear you. Thank you for joining us.

5 Okay.

6 Mr. Donoghue, now, you -- this is not -- you are not under oath. That said, this is
7 an official proceeding of the House, and a false statement could be 1001 violation. Of
8 course, you know to tell the truth at all times. And, if you can't recall specifically an
9 answer, then just say so. Ask me to repeat a question if it's not clear. If it is -- you
10 need clarification before you answer, just ask me to repeat or rephrase, and I will do that.

11 If you need any time to consult with Mr. Andres or your other attorneys, that is
12 totally fine. We will stop and give you that opportunity. If you need a break at any
13 time, that's fine as well. We'll take breaks periodically, but if you need one, just say the
14 word, and we'll stop.

15 Our essential agenda for the day, we're going to break this into essentially two
16 halves. The first half will be to talk a little bit about events around the time of the
17 election, meetings and conversations you had with the President, former President and
18 others in the White House, about allegations of election fraud. That should take up the
19 morning, about 2 hours or so. Maybe we'll take a break, midday break for lunch.

20 And then we'll resume in the afternoon with some questions about preparation
21 for and events of January 6th itself. ██████████ will be the one asking you
22 those questions. And I'll periodically stop. Members of the committee may have
23 questions, other counsel here. Everyone will have a chance to ensure that we get the
24 benefit of your experience. I hope that we are finished mid-afternoon. It sort of
25 depends on how quickly we can march through that subject matter.

1 Do you have any questions for me before we get started?

2 Mr. Donoghue. I don't. Thank you.

3 EXAMINATION

4 BY [REDACTED]:

5 Q Okay. Okay. Great. So I want to start just with a couple questions,
6 Mr. Donoghue, about your background. I understand that you enlisted in the Reserves
7 when you were 17 years old. Is that right?

8 A Yes. I enlisted in the Army Reserves and the Military Police Corps when I
9 was 17.

10 Q Tell me a little bit about your military career.

11 A I served in one capacity or another more than 20 years, initially as an
12 enlisted soldier, later as a cadet, and then as a commissioned officer. I spent 7 years on
13 Active Duty after law school and the Judge Advocate General's Corps. I spent most of
14 that time at Fort Bragg. I spent 3 years in the 82nd Airborne Division, a year at XVIII
15 Airborne Corps serving in a variety of roles: prosecutor, defense counsel, legal assistance
16 attorney, ethics advisor, administrative attorney, and probably a couple of other things as
17 well.

18 After 7 years on Active Duty, I was put to the Individual Ready Reserve. In 2000,
19 when I left the Army to join the U.S. Attorney's Office in the Eastern District of New York,
20 and I ultimately resigned my commission sometime in 2006.

21 Q I see. So you were a reservist from 2000 to 2006 when you were an AUSA?

22 A Correct.

23 Q Okay. Let's talk about your time as a prosecutor. You were in the Eastern
24 District of New York as an assistant for 11 years. Is that right?

25 A Just under 12, right, from 2000 until November of 2011 when I left. I left as

1 the chief of the criminal division.

2 Q And, generally, for the record, what does the criminal chief in a U.S.
3 Attorney's Office do?

4 A In the Eastern District of New York, the criminal chief oversees about 120 or
5 so AUSAs divided into eight different sections. We have two offices in the Eastern
6 District of New York -- one in Brooklyn, one in Central Islip on Long Island -- and, basically,
7 along with a lot of other supervisors within the Criminal Division, operates the division,
8 the prosecutions, and the investigations pursuant to the instructions of the U.S. attorney,
9 who, when I left -- actually, when I started in 2000 was Loretta Lynch and when I left in
10 2011 was Loretta Lynch.

11 Q And she had left and come back, right? She wasn't the U.S. attorney that
12 whole time?

13 A Correct.

14 Q Right.

15 A Right, I worked for a number of U.S. attorneys.

16 Q Fair to say that the criminal chief supervises all of the criminal litigation in
17 the U.S. Attorney's Office reporting just underneath the U.S. attorney?

18 A Yes, that's right. We never had a first assistant when I was the criminal
19 chief, so my reporting chain was directly to the U.S. attorney.

20 Q Got it. Okay. So you left in 2011. Is that right, Mr. Donoghue, you left
21 the U.S. Attorney's Office?

22 A Yes. I went to a software company where I stayed for about 6 years. It
23 was a Fortune 500 software company on Long Island.

24 Q What was your role there?

25 A I was ultimately the chief of worldwide litigation. I initially was brought in

1 to handle U.S. litigation, but in about 3 or 4 months into the job, the general counsel
2 asked me to take over worldwide litigation. We were in 45 countries. We had
3 litigation all over the world. So I spent the vast majority of my time working on litigation
4 matters, but I also did other things, M&A work, help with compliance, and various things
5 like that across the company.

6 Q At some point, did you return to the Justice Department?

7 A I did. In January of 2018, I got to return to my old office to serve as the U.S.
8 attorney for the Eastern District of New York.

9 Q And tell us a little bit about the process by which you got that job. How
10 were you appointed U.S. attorney?

11 A I was actually appointed by the Attorney General. There were a number of
12 us -- I think 17 or 18 -- appointed on the same day in early January. The way that works
13 is you are appointed by the Attorney General for a 120-day term. At the end of that
14 term, either you leave or the court continues you as U.S. attorney or potentially you are
15 nominated and confirmed by the Senate in that time.

16 Given the political situation in New York and the fact that we had no Republican
17 Senators in New York and Senators typically play a key role in selecting U.S. attorneys,
18 there was no expectation that we would be nominated and confirmed by the Senate.

19 So the U.S. attorneys in New York, New Jersey, and other places all came in
20 through this mechanism whereby the Attorney General appointed us, and I think the
21 expectation was that, because we were known to the court and trusted by the court, that
22 the judges would continue us in office, and that's what happened in my case. So I
23 continued as the U.S. attorney until I moved to Washington in July of 2020.

24 Q I see. So initially appointed by the AG, and then that appointment was
25 maintained by the judges in the Eastern District, never Senate -- never nominated and

1 Senate-confirmed?

2 A Correct.

3 Q Okay. The big priorities when you were U.S. attorney, do you have a
4 couple of highlights of significant prosecutions or issue priorities that you pursued?

5 A A big priority for us for a long time has been violent crime. We have a
6 significant MS-13 problem in the Eastern District of New York. There were a lot of
7 MS-13 murders in 2014, '15, and '16, and so we focused on those a lot. Thankfully, we
8 were able to drive those numbers down significantly.

9 Another big issue was opioids. As with the rest of the country, we're suffering
10 through the opioid epidemic. So we're dealing with that. And we also had a number
11 of what I guess people consider to be high-profile cases, such as the prosecution of El
12 Chapo, the cartel leader, who was arrested well before my time in the Eastern District but
13 went to trial while I was the U.S. attorney.

14 Q All right. So being U.S. attorney is a great, great job, and you left it to come
15 to Washington to serve in the DAG's office. Tell us, A, what was the job in Washington
16 that lured you here from Brooklyn, and why would you leave being U.S. attorney to come
17 to the DAG's office?

18 A Apparently I was not thinking clearly. You are right; being a U.S. attorney is
19 a great job. It's everyone's dream to get to come back to your office and do that, and I
20 was very lucky to have the opportunity to do it. I was involved in things in D.C. from the
21 time I became U.S. attorney.

22 I think my first month on the job I got a call from Rod Rosenstein, who said that he
23 wanted me to serve on the AGAC, the Attorney General's Advisory Committee. So I was
24 happy to do that. I was participating on the main AGAC committee, as well as several
25 subcommittees. I was the chair of the Terrorism and National Security Subcommittee.

1 I was on the White Collar Subcommittee, as well as a few others.

2 So I was very involved in things going on in Washington to begin with, and part of
3 that was just the size of the district, the work that we were doing, and just the ease of me
4 being able to get back and forth to D.C. versus, you know, some of my colleagues who
5 were a little farther away.

6 So I did that for a time. I got involved in a number of other things in D.C. I was
7 on an MS-13 Working Group, Elder Fraud Task Force, Rule of Law Working Group. And
8 these were all positions that I was asked to take on mostly by Attorney General Sessions
9 or DAG Rosenstein, but then, as the AGs and the DAG switched out, that continued once
10 AG Barr started, and he had asked me to come to D.C. on a number of occasions to work
11 on different things.

12 Nothing really quite seemed right. But, in June of 2020, we, of course, were in
13 the middle of COVID. The operations at the office had slowed down considerably.
14 There was an individual who had been my criminal chief who was serving as the PADAG.
15 I knew that he had gone down there in hopes that he'd be back in New York in a year. I
16 think he was at 14 or 15 months at that point, and I know he was hoping to be able to
17 come back to New York.

18 There was not a tremendous amount of work in terms of criminal investigations
19 and prosecutions being done in the office at that time, and I thought by going to D.C. that
20 it would be an opportunity for me to get down there, work at Main Justice, and get a
21 better understanding of the organization from that angle.

22 So, when the AG asked me to go down in June, I thought about it for a day or so,
23 discussed it with my wife, and then told him I would be willing to switch places with Seth
24 DuCharme, who was the PADAG. I would go in as the PADAG, and Seth would come
25 back and get to serve as U.S. attorney.

1 Q I see. So you and Mr. DuCharme essentially switched places. You came
2 to Washington to serve as the PADAG, and he went to be the U.S. attorney in the Eastern
3 District of New York?

4 A Yes, that's right.

5 Q And that was, Mr. Donoghue, you said, June of 2020, is that right, or was it
6 2019?

7 A I think the actual switch was July of 2020, so it was in the middle of COVID.

8 Q Got it. Okay. All right. I wanted to stop for just a minute and introduce
9 Congressman Schiff, who is a member of the select committee. I think Congressman
10 Schiff has joined us remotely. I want to make sure his presence is noted as well.

11 A Good morning, sir.

12 Q Mr. Donoghue, you are using the acronym PADAG. What does that stand
13 for, and what does the PADAG do?

14 A The PADAG is the Principal Associate Deputy Attorney General. There are a
15 number of Associate Deputy Attorneys General, about a dozen or so. And the PADAG,
16 essentially within the organizational chart, sits on top of them and serves as the -- sort of
17 the right-hand executive to the Deputy Attorney General. So, in that position, I was the
18 number two to the number two for the Department.

19 Q Right. And, when you came in July of 2020 to serve as PADAG, who was
20 the Deputy Attorney General?

21 A At that time, it was Jeff Rosen.

22 Q Okay. Did you have a prior relationship with Mr. Rosen, worked with him,
23 knew him?

24 A A little bit, yes. Certainly, all the U.S. attorneys report up to the Deputy
25 Attorney General, as do the heads of the different agencies within the Department. So

1 he was my boss. I knew him. He had come to New York on at least one occasion,
2 visited the office. We had worked together on a number of different things. I had a lot
3 of respect for him. I thought he was a great lawyer. So I was more than happy to go to
4 Washington to work for him.

5 [REDACTED] I see. I'm sorry again for the interruption, but Representative
6 Lofgren has joined us, another member of the select committee.

7 Good morning, Ms. Lofgren.

8 Ms. Lofgren. Good morning.

9 Mr. Donoghue. Good morning.

10 BY [REDACTED]:

11 Q So if I could get Mr. Donoghue to go back to the question set. Mr. Rosen
12 approved of or even solicited this move for you to come and serve as his PADAG?

13 A Yes. We talked about it. It was originally raised by AG Barr. I did talk to
14 DAG Rosen about it, and he said he'd be very happy to have me come down there and
15 help him out.

16 Q Okay. So, just a few months after you joined the DAG's office to serve as
17 the PADAG, you -- Mr. Rosen became the Acting Attorney General. How did that affect
18 your status in terms of your title and what you did day to day? We're now in December
19 of 2020.

20 A Right. AG Barr submitted his resignation to the President on
21 December 14th. It was effective, I believe it was, midnight of December 24th. So he
22 effectively left the office on December 23rd. And, upon his departure, DAG Rosen
23 became the Acting Attorney General, and I became essentially the person exercising the
24 authority and holding the responsibility of the Deputy Attorney General.

25 I did not use the term "Acting Deputy Attorney General," although most other

1 people did because, under Federal personnel law, if the person holding the title is still in
2 the Department, you don't use the acting title. So, although a lot of people refer to me
3 in emails and elsewhere as the Acting DAG, I didn't actually use that title myself.

4 Q I see. But, in effect, you functioned as the Acting Deputy Attorney General
5 even if Federal personnel laws didn't allow you to use that title. Is that fair?

6 A Yes. That's correct.

7 Q Okay. And then you -- I'm going to come back, obviously, to a lot of detail
8 about what occurred during the time that you were acting as the DAG, even without the
9 title. But I just want to finish with respect to your DOJ career. When did you actually
10 leave the Department?

11 A So I left Washington at the end of January. I was there through the
12 transition. Because I was a career employee as opposed to a political employee, I did
13 not have to leave at the end of the administration, but, of course, that had always been
14 my intent to leave.

15 I was on detail from the Eastern District of New York to Washington. That detail
16 expired January 31st. I returned to New York. I took leave. I had, you know, many
17 weeks of leave saved up. So I took leave. I did some work in the Eastern District of
18 New York, really just wrapping up cases and records and things like that. And then I
19 ultimately retired in April of this year, April 2021, from the Justice Department.

20 Q I see. And then are you currently employed?

21 A No. As I said, I retired in April. I've been in discussions with -- took the
22 summer off basically, and I've been in discussions with a number of law firms, and I
23 expect to be starting one in the next few weeks.

24 Q Got it. Okay. All right. Let me go back now into a couple of things that
25 happened when you were in that Acting DAG capacity. Is there at the Department,

1 Mr. Donoghue, a policy on contacts with the White House?

2 A Yes. There is a White House contacts policy.

3 Q Generally describe what it says. What is the essential thrust of the
4 White House contact policy that applies to personnel across the Department?

5 A Essentially what it does is it limits the contact between the White House and
6 the Department to certain levels within the Department in order to ensure that there is
7 some distance maintained between the White House and the Department. So it sets
8 forth who can talk to personnel at the White House and what types of matters they can
9 talk about.

10 Q I want to turn your attention, if I can, in your binder. And, for the record,
11 we've provided your counsel with all the exhibits that we're going to use in advance.
12 And if you could just turn to exhibit 1, to an email, Mr. Donoghue, that you sent on
13 November the 11th of 2020 at 6:27 p.m. Do you see that document in front of you?

14 A Yes. I have it.

15 Q Okay. Tell us what that is.

16 A It's an email I sent out on Veterans Day, November 11th, at 6:27 in the
17 evening, to the Assistant Attorneys General, the AAGs, who ran different components
18 within the Main Justice headquarters in Washington.

19 Q Good. So Assistant Attorneys General, to be clear, are the component
20 heads. There's one for civil rights and one for antitrust and one for civil, for all the
21 litigating divisions of the Department?

22 A Correct.

23 Q And you sent this email to them, and tell us what was attached to the email.

24 A The DOJ White House contacts policy --

25 Q In the --

1 A -- which was also the --

2 Q -- email --

3 A -- attached exhibit. —

4 Q I am sorry. Go ahead. I didn't mean to interrupt you.

5 A It's dated May 11th, 2009, and it was attached to the email that I sent out.

6 Q Okay. So, on November 11th, you sent the White House contacts policy
7 out to all the Assistant Attorneys General?

8 A Correct. It looks like it also sent out the White House version of this as
9 well. They have a parallel policy.

10 Q Okay. Why, Mr. Donoghue, did you send that out to the field or to the
11 AAGs November 11th, like a week or so after the election?

12 A I sent this out pursuant to a discussion I'd had earlier that day with Will Levi,
13 L-e-v-i. Will was AG Barr's chief of staff at that point. I don't remember the specifics,
14 but I remember Will saying that he had sent this out to people on the AG's staff, and he
15 thought it might be prudent to send it out to the AAGs.

16 We were in the post-election period. You know, there was a tremendous
17 amount of churn in terms of election fraud allegations. And, I forget exactly what Will
18 said, but he said something to the effect of "let's make sure people are aware of the
19 policies and remind them of the policies so that no one stumbles over a line," something
20 to that effect.

21 Q Was there concern, in your view, that people without warning might
22 stumble over the policy by getting outreach from the White House?

23 A I didn't have that concern with regard to the AAGs certainly. But, again,
24 Will suggested I send it out. There was no harm in doing so. I thought it was prudent,
25 so I just sent it out.

1 Q Okay. When you sent it out, Mr. Donoghue, just looking at your email, you
2 say, "While we are living in distracting times, it is imperative that we ignore the noise and
3 remain focused on the responsibilities in our respective lanes and that we keep our teams
4 doing the same."

5 Just share with us what you mean -- what you meant when you said we're living in
6 distracting times and that we need to ignore the noise and remain focused on our
7 responsibilities.

8 A So, as I said, there was a tremendous amount of churn following the
9 election, certainly leading up to the election, but we had hoped that that would calm
10 down after the election. That was not the case. So there was a lot of noise about the
11 election. There was a lot of noise about whether the results of the election were
12 reliable.

13 We have some responsibilities with regard to that, but really only a small subset
14 when you look at the whole picture. So I just wanted the people in the Department to
15 continue working on the things that we work on day in, day out without being distracted
16 by the political drama that was playing out.

17 Q Did you get any feedback from recipients of the email that you remember?

18 A I don't remember. I might have, but I don't remember.

19 Q Okay. And then, to be clear, there is really two attached documents.
20 There's one that's dated May 11th of 2009, signed by then-Attorney General Holder, and
21 then a second, January 27th, 2017, that the White House version that is from
22 then-White House Counsel McGahn, and they essentially say the same thing. Is that
23 right?

24 A Yeah, they parallel one another to limit the communications from both ends.

25 Q Yeah. Reading from page 2 of the 2009 document at the very top, it says:

1 Initial communications between the Department and the White House concerning
2 pending or contemplated criminal investigations or cases will involve only the Attorney
3 General or the Deputy Attorney General, from the side of the Department, and the
4 Counsel to the President, the Principal Deputy Counsel, the President or the Vice
5 President, from the side of the White House.

6 That essentially is the core of it, right, Mr. Donoghue, that only the AG and the
7 DAG will talk to the White House counsel or the President about pending or
8 contemplated criminal investigations?

9 A Yes, that's the core of the policy.

10 [REDACTED] Okay. I understand as well that Congressman Raskin has joined.
11 Congressman Raskin, can you see and hear us as well?

12 Mr. Raskin. Yes, I can. Thank you.

13 [REDACTED] Great. Okay. Okay. Great.

14 BY [REDACTED]:

15 Q All right. Let me move you ahead now, Mr. Donoghue, if I can, to the
16 November the 9th of 2000, and this is not reflected in a document, but is there a memo
17 sent from Attorney General Barr out to the U.S. attorneys regarding their authority to
18 investigate allegations of election fraud?

19 A Yes, AG Barr did send out a memo that day to not just the U.S. attorneys, but
20 I think it was also the AAGs who had election-related responsibilities within Main Justice
21 as well as, I believe, the FBI Director.

22 Q Okay. And does that memo, the instructions in the memo, reflect a change
23 in policy from the Department in terms of the pursuit of allegations of election fraud?

24 A I would say it reflected a slightly different approach, a change to practice
25 rather than policy, and this is --

1 Q Okay. Describe that for us.

2 A So the -- let me explain the organization a little bit.

3 Q Yes.

4 A Within the Criminal Division that sits at Main Justice, there is a section called
5 the Public Integrity Section. Within Public Integrity, there is the Election Crimes Branch,
6 ECB, and ECB had expertise in conducting election-related investigations. And so they
7 were a resource to the 94 U.S. Attorney's Offices around the country.

8 There was, in the Justice manual, a number of requirements relating to
9 consultation with the ECB, and that's common to have consultation requirements with
10 different Main Justice components. There are also situations where you have approval
11 requirements, where a U.S. Attorney's Office cannot go forward without getting the
12 approval of certain Main Justice components.

13 ECB, because of their expertise and their role, published a manual -- I forget the
14 exact title, but it was essentially the election crimes manual. And, in there, they had
15 over years developed and stated a practice, and this is an oversimplification, but the
16 practice essentially was to not conduct investigations in real time while elections were
17 going on, wait for the elections to be completed and certified and for the election winner
18 to take office essentially, and then conduct investigations.

19 Obviously, this meant that you could not then address any fraud that may have
20 contributed to the outcome of the election. Their thought was we should be conducting
21 investigations essentially after the fact in an effort to deter misconduct in future
22 elections.

23 That made a lot of sense, and there's certainly merit to that approach. I would
24 call it a practice rather than a policy. This was not something issued over the signature
25 block of an Attorney General or Deputy Attorney General or anything like that. An ECB

1 doesn't have the power to make policy for the Department, but this was the practice of
2 the Department generally.

3 There were always exceptions to that and the manual itself talks about exceptions
4 and says this is the general rule and things like that. Obviously, you've got to exercise
5 judgment in particular circumstances.

6 What AG Barr was concerned about, and what's reflected in the memo, is that this
7 was a very unique situation and that, because there was so much at stake, because there
8 was no way to redo a Presidential election, and because we had so many allegations
9 coming in that called into question the outcome of the election, he wanted us to move
10 away from that very passive approach and take a more proactive approach because he
11 felt, as he explained to me and I heard explained to others throughout this time period,
12 the American people have to trust the outcome of this election. If there's fraud that
13 impacted the outcome of the election, they should know. If there's fraud allegations
14 and we find that those are not supported by the evidence, the American people should
15 know that as well.

16 So he wanted to take this more proactive approach. He wanted to give the U.S.
17 attorneys the authority to do that, and I think they had that authority anyway. But the
18 reality was, the way things had played out within the Department, the ECB acted as if
19 they had approval and disapproval authority over the work of the U.S. Attorney's Offices.
20 They did not. Their authority, their consultation authority wasn't changed by the
21 November 9th memo. It remained the same.

22 But the individual AUSAs in those different offices around the country were very,
23 very reluctant to go forward with any election-related matter without ECB concurring.
24 So if ECB did not concur, typically the election would -- investigation would stop in its
25 tracks.

1 And this was creating problems because you had U.S. attorneys who want to
2 investigate things and their own assistants saying, well, we're not going to do it because
3 ECB is not concurring. And then you had a parallel problem within FBI because ECB
4 coordinated with FBI's public corruption branch in Washington, and the public corruption
5 branch in FBI was very reluctant to go forward with anything without ECB's concurrence.
6 And so, even if you had FBI leadership in the field saying we ought to investigate this,
7 again, their own agents would say, well, we can't go forward because public corruption
8 branch says ECB won't approve.

9 So there was definitely conflict here between the AG's approach and ECB's
10 approach. There's merit to both approaches. I get that. But the AG made a decision
11 based on the unusual facts and circumstances that we found ourselves in, and even after
12 he made that decision, there was what I would describe as foot dragging by ECB and
13 others with regard to this approach that the AG wanted to take.

14 Q I see. Okay. So summary: AG Barr authorized U.S. attorneys explicitly
15 on November 9th to go ahead and conduct investigations of allegations of election fraud
16 rather than wait until the results were certified, as had been the prior practice and ECB as
17 the gatekeeper?

18 A Generally, that's right, and he gives some guidance in the memo itself as to
19 what would or would not warrant any sort of Federal investigation.

20 Q All right. What was your role then, Mr. Donoghue, going forward as the
21 PADAG in terms of U.S. attorney investigations of allegations of election fraud? What
22 role did you specifically in your office play as those after the memo was issued, those
23 investigations moved forward?

24 A So, even prior to the memo, as the PADAG, I had a tremendous amount of
25 interaction with the U.S. attorneys. That is in part because of the role, of course, but

1 also because I'd been a U.S. attorney, and I knew every U.S. attorney in the country, and I
2 was very close to and friendly with a number of them. And so it was quite natural for us
3 to be talking on a regular basis about what was going on whether it was related to the
4 election or otherwise.

5 After this memo, I had a number of conversations with U.S. attorneys around the
6 country about their investigations and also the challenges because not everyone was on
7 board with the AG's approach.

8 Q So you served sort of a coordination or deconfliction role for the Department
9 on matters of election fraud?

10 A Yes. There wasn't so much conflict, but we had some instances where, you
11 know, an allegation was made in, say, a swing State and you had multiple U.S. attorneys
12 in that swing State and you didn't want all of them investigating the same thing. So
13 there was some deconfliction. But it was mostly reporting up and saying that, yes, the
14 U.S. attorney in this State is aware of the allegation and they're on top of it.

15 It was up to them to decide what to investigate and how to investigate it, if to
16 investigate at all. But the concern was, is someone looking at this? You know, I think
17 the AG stated it as we can't be sitting on our hands. As long as people are aware of the
18 allegations and they're acting appropriately, that's fine. Leave it up to the U.S. attorneys
19 to figure it out.

20 Q And you just said, Mr. Donoghue, that you reported up. Were you in
21 regular communication with DAG Rosen and AG Barr about the fact that these
22 investigations were going forward in the U.S. Attorney's Offices?

23 A Yes. Being part of the Department leadership, we met with the AG every
24 morning at 9 o'clock in his office. So we had those daily meetings. I also had regular
25 contact with the AG outside of those 9 a.m. meetings. The DAG and I worked side by

1 side all day every day. There's one door between our two offices. I was constantly in
2 his office. He was constantly in mine. So anything that I knew he would have known
3 for the most part within a few minutes.

4 Q Yeah. So, on December the 1st of 2020, Attorney General Barr publicly
5 announced that the Department had found no evidence of systemic election fraud
6 sufficient to undermine the outcome. Do you recall that public statement?

7 A Yes, I do.

8 Q All right. Were you involved in formulating that conclusion, his conclusion
9 that there had been no evidence discovered of systemic election fraud?

10 A I think his conclusion reflected the input we were getting from the field. So
11 I helped channel some of that information up. So I shared his view. He also talked, in
12 some instances, directly to the U.S. attorneys, which was not unusual either. So he was
13 getting that not only through me and through DAG Rosen but through U.S. attorneys.
14 So I did not formulate his statement that day in any way, but it was consistent with
15 everything I had seen.

16 Q Okay. So you are anticipating my next question. That statement was the
17 product of a number of U.S. Attorney's Offices pursuing allegations yet finding no
18 evidence of systemic election fraud. Is that right?

19 A Yes, that's right.

20 [REDACTED] Okay. Let me stop there and see if Ms. Cheney or Congressman
21 Schiff, Ms. Lofgren or Ms. Murphy have any questions for Mr. Donoghue?

22 Ms. Cheney. I have none, [REDACTED].

23 [REDACTED]: I'm sorry? Go ahead, Ms. Cheney. Did you say you do have
24 one?

25 Ms. Cheney. No. I said I have none.

1 [REDACTED] Have none, I see, okay.

2 Mr. Schiff. I don't have any questions either at this point. Thank you.

3 [REDACTED] Okay. Thank you, Mr. Schiff.

4 Mr. Raskin or Mrs. Murphy or Ms. Lofgren, anything from you?

5 Mrs. Murphy. Nothing here from Murphy, thank you.

6 BY [REDACTED]:

7 Q Okay. All right. Then, Mr. Donoghue, let me go ahead on to the next tab
8 in your binder, which is exhibit 2. Now, a little bit after Attorney General Barr has issued
9 his December 1st statement, an email exchange that you have with David Bowdich, who I
10 believe at the time was the Deputy Director of the FBI. Do you remember this
11 exchange?

12 A Yes, I do.

13 Q All right. Does this reflect some of that tension that you described before
14 between the Public Integrity Unit and the election -- the ECB and the U.S. attorney or the
15 FBI about authority to investigate specific allegations of election fraud?

16 A Yes. This is one example of how that tension was playing out within the
17 Department.

18 Q All right. If you go all the way back to the beginning of the email, the first
19 page is an email from Corey Amundson probably -- it looks like to someone -- it's
20 redacted, but it looks like someone in the FBI, where he is setting forth the ECB view that
21 DAG should be essentially the gatekeeper for authorization of investigative activity. Is
22 that right?

23 A Yes, I think that's generally what he's saying.

24 Q And he says PIN does not concur in any overt investigative activity, including
25 the proposed interviews, essentially saying that he doesn't think that there should be

1 investigative activity about this allegation in Georgia?

2 A That's essentially what he's saying, yes.

3 Q All right. So then David Bowdich brings this to you for resolution, and you
4 respond, Mr. Donoghue, with the last email in the chain, essentially saying go forth and
5 do the interviews. Can you explain to us sort of what your position was when this
6 conflict arose between ECB and the FBI agents in Georgia who were asked to do these
7 interviews?

8 A Right. So, if I'm remembering this allegation correctly, this had to do with
9 the State Farm Arena and Fulton County ballots. And there was some allegations being
10 made in, I believe, in civil litigation but also just generally out there in the media that
11 there was a video that showed, in fact, that ballots, apparently fraudulent ballots, had
12 been smuggled into State Farm Arena, and that, after the observers were sent away in
13 some nefarious way, that these fraudulent ballots were then processed, and that
14 somehow impacted the outcome of the election in Georgia.

15 The ballots were available, obviously, at State Farm. The video was out there on
16 the internet. There were various people involved, and the Attorney General and the
17 U.S. attorney and at some point Dave Bowdich all looked at this, and we determined that
18 we could do a brief investigation to determine whether any of that could possibly be true,
19 particularly given how close the election was in Georgia.

20 And so FBI decided to go ahead and do limited interviews of the witnesses, review
21 of the videotape, that sort of thing. And I think they were going to work this one in
22 conjunction with the Georgia Secretary of State's Office. That was fine. That was
23 entirely up to FBI and the U.S. Attorney's Office as to who they were going to work these
24 cases with, if anyone.

25 But, again, you see this playing out where PIN says, well, we don't want you to go

1 ahead and interview the witnesses. Ultimately, they did. I think they interviewed
2 about a dozen witnesses who were at the facility that night. The interviews of the
3 witnesses, the review of the video ultimately revealed that there was nothing nefarious.
4 There was no evidence on the video that fraudulent ballots were smuggled into the
5 facility.

6 The observers did leave early, but that was more a matter of confusion about how
7 late the ballot counting would go on that night, and it didn't seem like there was anything
8 nefarious it to.

9 So, ultimately, in this particular example, we were able to determine that the
10 allegations were not well founded, and this is one of the examples that fed into AG Barr's
11 view that he announced publicly that there was not evidence that there was fraud
12 sufficient to change the outcome of the election.

13 Q I see. So the FBI looked into it, essentially found the allegation about fraud
14 was unfounded and that the integrity of the ballots at the State Farm Arena was not
15 infected with fraud?

16 A Correct.

17 Q Okay. Similar allegation arises in Michigan, if you could turn to exhibit 3.

18 A Yes. I have it.

19 Q Moving forward about a week, this is December the 14th. There's an email
20 from Molly Michael to Jeff Rosen, and it attaches some talking points from Antrim
21 County, Michigan. Do you recall getting this forwarded to you, Mr. Donoghue, and
22 being familiar with both the allegation and then the subsequent investigation of the
23 issues in Antrim County?

24 A I don't believe that DAG Rosen forwarded this email to me, but I did have the
25 report itself separately. And what happened in this situation was I believe, on the 13th

1 of December, which was Sunday, pursuant to some civil litigation that was going on in
2 Michigan, this group, Allied Security Operations Group, made public this report of theirs.

3 Just to back it up a minute, Antrim County in Michigan had some litigation that
4 was in State court. The Department was not involved in that whatsoever. We had no
5 involvement. But, pursuant to that State litigation, a judge allowed the plaintiffs and
6 their experts to look at the voting machines in Antrim County, and those were Dominion
7 voting machines. Dominion is widely used around the country, both their hardware and
8 their software.

9 Q And, just to stop you for a minute, this State litigation is brought -- initiated
10 by former President Trump and his -- others acting on his behalf, essentially making an
11 allegation that those ballots were somehow infected, unreliable, and that's playing out in
12 State court?

13 A I don't believe so. I think this was brought by a private citizen. I don't
14 think this was brought by the campaign. But whether that was someone who was in
15 some way allied with the President's campaign, I don't know, but from my recollection,
16 there was a private citizen who was challenging, if not the Presidential election, maybe
17 something else on that ballot.

18 But, regardless, a State court judge said that the plaintiffs could go in, look at the
19 hardware, look at the software, and do their own analysis. And, supposedly, that's what
20 produced this report from Allied Security Operations Group. That came out on Sunday,
21 the 13th. I believe this was attached to some sort of application in the State court
22 proceeding, and so it became public. It was all over the internet. There was a lot of
23 talk about it.

24 The allegation here essentially was that this forensic review indicated that the
25 Dominion machines produced a 68-percent error rate. Now, obviously, if the Dominion

1 machines produced a 68-percent error rate, we had a huge problem with the election.

2 So this came to us on Monday. I was certainly aware of it Monday. I might
3 have been aware of it on Sunday as well when it first hit the news because I was trying to
4 track these things. When Jeff Rosen received this email from the President's secretary, I
5 was up on the fifth floor in Attorney General Barr's office. So I didn't get this from DAG
6 Rosen.

7 As I was leaving AG Barr's office around 5 p.m., close to 5 p.m., he brought this up.
8 I don't know if we discussed it earlier in the day as well, but he brought it up, and he said:
9 Are you aware of this report out of Michigan?

10 I said: Yes. I hadn't read the report, but I'd seen the headlines.

11 And he said, essentially: Make sure the U.S. attorneys are aware of it. Make
12 sure we're on top of this thing. Make sure we're taking a look at it.

13 And so, as I left his office, his secretary, [REDACTED] sits right outside his door.
14 He said something to the effect of "[REDACTED] has copies of the report."

15 So, as I left his office, I said to [REDACTED]: Do you have copies of this Michigan
16 report?

17 She said: Yes. I have them on my computer.

18 I said: Great. Can you just send them to the U.S. attorneys in Michigan so they
19 have them.

20 And so you see that on tab 4. That's [REDACTED] sending it out, correctly noting that
21 it was pursuant to my instructions because I wanted to make sure that the U.S. attorneys
22 in Michigan had their report, and they were aware of the allegations.

23 Q Yeah.

24 A I think --

25 Q I just want to make sure for the record I'm clear, so exhibit 4 -- you are,

1 again, anticipating exactly where I'm going -- you take this report, the ASOG report, and
2 ask that it be sent to the two U.S. attorneys for the two districts in Michigan for them to
3 evaluate and potentially pursue. Is that right?

4 A Correct. And, again, I was upstairs on the fifth floor. So I wasn't even
5 aware that DAG Rosen had received this from the White House down on the fourth floor
6 2 minutes prior.

7 Q Okay.

8 A But this report was everywhere and obviously was something we were going
9 to have to look at because if there was any possibility that there was a significant error
10 rate with the Dominion machines then that would create a lot of issues for the election.

11 Q Yeah. So tell us then whether or not this was investigated and what
12 conclusion was drawn.

13 A So AG Barr asked -- and I don't remember if this was on the 14th when I was
14 upstairs, or it was the following morning or at some other point, but somewhere in this
15 time period, AG Barr wanted Department of Homeland Security to take a look at the
16 Allied report.

17 And the reason is, within Department of Homeland Security they have an agency
18 called CISA, C-I-S-A, which is the cyber infrastructure -- I'm sorry, Cyber and Infrastructure
19 Security Agency, and they have expertise in election hardware and software. They
20 provide support and assistance to States and localities in using and qualifying election
21 hardware and software. So they're the Federal government's experts in this.

22 AG Barr wanted them to take a look at this report and to report back to him as to
23 whether there could be any truth to this. Obviously, on its face, a 68-percent error rate
24 is very, very unlikely. Hard to believe that that's true, but he wanted them to take a look
25 at it and give them his feedback.

1 They did that. They sent several people over within a day or two to brief the AG
2 and others on what their conclusions were with regard to the Allied report. I was there
3 for that briefing. I think there were maybe four people that came over from CISA.
4 They briefed Attorney General Barr, Deputy Attorney General Rosen, Director Wray, I
5 believe Deputy Director Bowdich, myself, and there were probably two or three other
6 people in the room.

7 We went up. We heard them out. And they said essentially that the Allied
8 report was untrustworthy, that it drew erroneous conclusions for a variety of reasons,
9 one of which I remember being that they were using the wrong version of software, that
10 the Allied group was using a version of software that was not actually being used in
11 Antrim County. There were other explanations as to why this 68 percent error rate was
12 not correct.

13 And so Attorney General Barr asked and produced what he called a white paper
14 explaining why the Allied report was wrong. They ultimately produced something, I
15 think it was on December 18th, that was forwarded to me by Ken Cuccinelli at DHS. I
16 forwarded that to [REDACTED] AG Barr's secretary, and asked her to provide it to AG Barr.

17 But the outcome of all of this was that CISA looked at it, and they concluded that
18 the Allied report was wrong. And, in fact, again, pursuant to that State litigation that
19 was underway, there was a hand recount done in Antrim County. And so the hand
20 recount removes the software, removes the hardware from the equation, and the hand
21 recount was almost identical to the machine count. And so, for us, that made it clear
22 that the Allied report was wrong and that the Dominion voting machines and Dominion
23 voting software was reliable and producing reliable results.

24 Q Exhibit 5 in your binder, if you could take a look, is that the white paper -- it
25 starts with an email from Ken Cuccinelli to you, but is attached this very -- this one-page

1 document. And is that, Mr. Donoghue, the white paper that Attorney General Barr
2 asked the Homeland Security folks to produce?

3 A Right. I think Attorney General Barr in asking for a white paper was hoping
4 for something more substantive and detailed, but they produced this one-pager with
5 these bullet points, which was sufficient and made the point.

6 Q And, looking at the report, it says at the top: Those records were reviewed
7 yesterday and recounted by hand. This verification, independent of the software and
8 hardware systems in question, returned results that indicates the consistency of the
9 systems, with a 12-vote difference from the previous final tally. That reflects what you
10 said earlier about the fact that hand recount confirmed that the accuracy -- essential
11 veracity of the machine count?

12 A Correct. And although it changed, I believe, 12 votes, when you added
13 them all up within Antrim, I believe it was actually only a one-vote swing ultimately.
14 There were different election districts, and so, when you compiled all the election
15 districts, yes, there was a difference of 12 votes, but in the end, they canceled each other
16 out to the extent that there was only a one-vote difference, and there were about 15,000
17 votes cast in the county.

18 Q Yeah. So you went from initially an ASOG report that suggested, oh, a
19 68-percent error rate, we may have a real problem, to a hand recount that actually
20 confirmed within 1 vote out of 15,000, the results were accurate?

21 A Right. And I did the math, and that's an error rate of .0063 percent, which
22 is well within the tolerance for election equipment.

23 Q And certainly insufficient to cast doubt on the overall results of the Michigan
24 election?

25 A Correct.

1 Q All right. Now, did this come up -- between the time that you were -- that
2 you talked to Attorney General Barr about the report and when you got the white paper
3 from Homeland Security, did this come up in a meeting with the President in the Oval
4 Office on December the 15th?

5 A Yes, it did.

6 Q All right. So let's talk for a minute about that meeting. At this point,
7 December 15th, Attorney General Barr is still in place, correct? He's announced that
8 he's resigning, but he has not yet resigned?

9 A That's right.

10 Q How did it end up that you went to a meeting at the White House on
11 December the 15th? Tell us the circumstances that gave rise to that meeting.

12 A I don't remember exactly how it was first communicated to me. I'm pretty
13 sure it came from the DAG himself, that he came next door and said, you and I need to go
14 over to the White House this afternoon. We had to get a COVID test in advance. So
15 that was part of the procedures. We had to get over there in time to get a COVID test at
16 the Executive Building next door. I forget what time the meeting was. It was
17 mid-afternoon of some sort. And we traveled over there together. And DAG Rosen
18 and I participated in the meeting in the Oval Office with a number of other people, and
19 the Antrim County reports and allegation were discussed.

20 Q Who else was present, Mr. Donoghue, at that meeting?

21 A I believe it was chief of staff, Mr. Meadows, White House Counsel Pat
22 Cipillone, I think Deputy White House Counsel Pat Philbin was there, DAG Rosen, myself,
23 someone from DHS named Chad Mizelle. I forget what his position was at that point.

24 Shortly after the meeting started, the chief of staff said that he had to work on
25 something else, and he excused himself and he left. Also, shortly after the meeting

1 started, Ken Cuccinelli from DHS showed up.

2 Q Okay.

3 A So there was swap-out there, but I think that was everyone in that meeting.

4 Q Okay. And, at this point, Mr. Donoghue, had DHS, the unit -- I don't recall
5 the acronym, the unit that examined the machines, had they done that work, or was that
6 work in progress at this time?

7 A I think it was in progress at this point.

8 Q All right. Tell us about the discussion. What did the President say about
9 the ASOG report or Antrim County, Michigan?

10 A So the President obviously was very much aware of the report. He was
11 saying: Do you guys know about the tripped cord? Have you heard about this? This
12 is a disaster. This is unbelievable, a 68-percent error rate. How could this be? He
13 was going on about the Dominion machines and the Dominion software. He correctly
14 noted that this stuff was widely used across the United States.

15 And, at that point, the hand recount had not been completed, and we did not
16 have the feedback from CISA, C-I-S-A. And so we essentially said to him, Mr. President,
17 we are aware of it. Yes. We all agree that, if there's a 68-percent error rate with
18 Dominion voting machines, that we have a huge problem on our hands. But let's not
19 jump to conclusions. Let's find out if this is accurate.

20 And, in a way, luckily, the hand recount had already been ordered and I think was
21 already underway. And so I recall Ken Cuccinelli saying: Look, there's a hand recount
22 underway. It's going to take 48 or 72 hours. When that's done, we will know because
23 that's the gold standard, and we'll compare the hand recount results to what the machine
24 said, and we'll know what the error rate really is. And, if it's 68 percent, you know, then
25 we'll figure it out. But, right now, let's not get ahead of ourselves.

1 And DAG Rosen and I were essentially saying the same thing: Let's not get ahead
2 of ourselves. We're aware of the report, and just sort of wait to see what the results of
3 the hand recount are. And the President accepted that. He was fine with that, but he
4 was clearly very worked up about this claim that there was a 68-percent error rate.

5 Q I see. So you and DAG Rosen explained to him: We're looking at it.
6 We're going to -- this hand recount is going on, and CISA is looking at it, and we'll see,
7 right. We'll look into this claim of a 68-percent error rate?

8 A That's right.

9 Q Okay. Did he raise any other election-related issues during that meeting?

10 A He may have. I don't specifically remember, and I didn't take notes in that
11 meeting. Throughout this time period, from the 15th through January 3rd, the
12 President raised a number of these issues. And, when he would raise them, it was
13 generally in the context of, are you guys aware of this? Did you hear about the
14 Michigan report? Did you hear about this in Pennsylvania? Did you hear about that in
15 Georgia? And we would generally just say, "Yes, sir, we're aware of it, thank you," just
16 to check the block that, yes, we were aware without giving much detail in terms of what,
17 if anything, we were doing about it.

18 So he may have raised other things, but if he did, it certainly was secondary to
19 Antrim County because this was the crux of the conversation. A report had been issued.
20 The report claimed 68-percent error rate. That obviously had implications far beyond
21 Antrim County, far beyond Michigan, and we needed to just find out if this could be true
22 or not.

23 Q I see. So the main topic of conversation, perhaps not exclusive but main,
24 was this ASOG report and the allegations coming from Michigan?

25 A Right.

1 Q And were you brought -- Mr. Donoghue, is it your understanding that you
2 were brought because you were the guy at Justice that was essentially coordinating with
3 the U.S. attorneys or had the most personal knowledge of those efforts to investigate this
4 or other allegations?

5 A I assume that's why I was there, but, frankly, I didn't really question it. I
6 don't know if I was requested or if the DAG decided I should go or perhaps AG Barr. I
7 don't know. But I definitely had more knowledge about what was being done with
8 regard to these investigations by the U.S. Attorney's Offices than did the DAG.

9 Q Yeah.

10 A So it would have made sense that he would have wanted me there.

1

2 [11:00 a.m.]

3 BY [REDACTED]:

4 Q I see. Okay. Anything else about that meeting that you recall?

5 A Again, it's difficult. There were a number of meetings, so I don't want to
6 mix them in my mind. But the core of that meeting, that discussion, was certainly
7 Antrim County. And we were able to say to the President, we should know in a few
8 days. And that satisfied him, and we left.

9 Q All right. I see.

10 All right. I just have a couple more questions about Mr. Barr before he resigned.
11 How did you hear about Attorney General Barr's decision to resign? Did you hear about
12 it from him or from some other source?

13 A The actual decision to resign that day I heard about from another source. I
14 wasn't surprised, obviously. There was clearly tension between the Attorney General
15 and the President. You know, it had become sort of a running issue and a running joke
16 in some ways. Every time he returned from the White House, I asked him if he was still
17 the Attorney General. So --

18 Q Tell me more about that tension. What was the heart of it? Was it
19 election-related?

20 A I didn't ask the Attorney General. Again, most of this was publicly
21 reported, and so, you know, we see the papers like everyone else. He was clearly
22 frustrated. And it wasn't for me to pry into what was discussed or how it was discussed
23 or anything like that, but there was clearly tension.

24 And so, when he went over there on the 14th, we had our regular 9:00 a.m.
25 meeting with him that morning. He did say something about, you know, well, maybe by

1 the end of the day I won't be the Attorney General anymore. But, again, that was sort
2 of a common comment around this time period.

3 And he left sometime I think in the early afternoon, maybe around lunch or
4 something like that. After he left, I was in DAG Rosen's office, and one of his staff
5 members brought down his resignation letter. And she handed copies to me and DAG
6 Rosen and said, you know, you two should know what's going on, he's going over to
7 resign, he's had it, and you need to know what's going on because we don't know, you
8 know, what's going to come out of this meeting.

9 Again, had the President fired Attorney General Barr at that meeting, then, by
10 function of law, DAG Rosen would become the Acting Attorney General. So, as far as we
11 knew, he could become the Acting Attorney General at any moment, and it was
12 important that he know what the situation was.

13 So we sat in his office; we read the letter. It didn't surprise us. And then we
14 sort of went back to work over the next few hours to wait to see what happened at the
15 meeting.

16 Q And then did you get a summary of what happened at the meeting from AG
17 Barr or anyone else about the conversation he had with the President in which he
18 tendered his resignation?

19 A Yes. Late that afternoon, he returned. I saw his detail in the courtyard.
20 You can look down to the courtyard, and I knew his security detail, obviously.

21 I think I got a call from [REDACTED] and she said, he wants you to come up. So I
22 went up to the fifth floor, and I went into his office. I asked him if he was still the
23 Attorney General, he said yes, and then he gave me a brief explanation of the meeting
24 with the President.

25 Q Tell us what he said.

1 A He said that the meeting had gone as well as it could, that he had given his
2 resignation letter to the President, the President appreciated the letter. It was sort of
3 an amicable parting.

4 And then he said something to the effect of, now he's got to figure out who is
5 going to be the Attorney General. That comment surprised me a little bit, because I
6 assumed, and I think everyone else assumed, that Deputy Attorney General Rosen would
7 be the Acting Attorney General upon AG Barr's departure.

8 And so I said, well, that will be the DAG. And he responded something to the
9 effect of, "Maybe, maybe not. Your name came up. You should be prepared to get
10 called over to the White House, I would think tomorrow morning. You should take
11 tonight and think about what you want to do if he offers you the job."

12 All of this surprised me. I just kind of took it in. I said, okay. And then I went
13 back to my office on the fourth floor.

14 Q Let me stop you there for a minute. Did he say anything more about
15 discussion he had -- he, Attorney General Barr -- more discussion that he had with the
16 President about allegations of election fraud or the Department's endeavors to
17 investigate these allegations?

18 A Not really. But if you look at the opening lines of his letter, it says
19 something to the effect of, "I appreciate the opportunity to brief you today on how these
20 investigations have gone and how they will go in the future," which I thought was a very
21 intentional piece of wording on his part, saying that, look, this is what we going to do, this
22 is what we are going to continue to do.

23 But he didn't give me the details of the discussion beyond just generally
24 characterizing that it went as well as it could.

25 Q Yeah.

1 We had talked before, Mr. Donoghue, about the December 1st public reporting of
2 his statement, no evidence of systemic fraud. Did he ever tell you that he had provided
3 that kind of information directly to the President in face-to-face meetings -- he, again,
4 Attorney General Barr?

5 A I don't remember specifically hearing that from him, but it was my
6 impression that he was relaying that to the President.

7 Q That he was relaying, "Hey, there's no evidence of fraud; we're looking at it,
8 and we're not finding anything," was it your impression that he was conveying that
9 generally to the President over the course of the time between the election and his
10 resignation?

11 A Yes, it was.

12 Q Okay.

13 So, after you had this conversation with Attorney General Barr about "think about
14 whether you want to be Attorney General," did you hear from the President directly?

15 A I did. I went back to my office immediately after that. I called my wife.
16 I told her what was going on. And, you know, she said, well, what are you going to do?
17 And I said, I can't even think about it right now, there's too much going on, and I'll think
18 about it tonight, we'll talk tonight. And I hung up.

19 A few minutes later, the phone rang, my -- I believe it was my government cell
20 phone rang. I answered it. It said, "This is the White House operator. Please hold for
21 the President." And then the President came on the line and we had a brief discussion.

22 Q Tell us about the discussion.

23 A As I recollect, the President said, "Have you heard that Bill is leaving?"

24 I said, "Yes, sir. I saw him when he returned to the building. I heard that you
25 had a good meeting."

1 He said, "Yes, yes, it was a very good meeting. It was fine. He gave me a letter,
2 a beautiful letter. It talks about some of the things we've been able to do together, so I
3 really appreciate that. But he's leaving, and now I have to figure out who should be the
4 Attorney General. I think you'd do a great job in that position. Is that something you'd
5 want to do? Do you want to serve as the Attorney General?"

6 And I just responded, "Mr. President, I appreciate the consideration, but I really
7 think it's in the best interest of the country, the Department, and you to follow the
8 regular procedures. We have procedures for this situation, and I think those should be
9 followed."

10 And he said, "That means Jeff Rosen would serve as the Acting Attorney General."

11 I said, "That's right. He's a great lawyer. He'd do a great job."

12 And he said, "You would serve as his deputy?" as a question. And I said that he
13 and I had discussed that, if AG Barr left, that I would function in the Deputy Attorney
14 General's role.

15 He asked if I was going to leave before the end of the administration. I said I was
16 not, I was going to stay until the end. And he said, "Okay. That's fine. I'll call Jeff in a
17 little while."

18 I hung up the phone. I went immediately back up to the fifth floor so that AG
19 Barr was aware of what had just happened. I explained it to him very briefly, and he
20 said, "Okay."

21 I went back downstairs. At that point, our weekly Monday staff meeting was
22 already underway. We had a weekly 4:30 staff meeting with the DAG, myself, the chief
23 of staff, and the various associate deputy attorneys general. I went into the staff
24 meeting, which was in the DAG's conference room. There were about 8 or 10 people in
25 the conference room, a number more on the telephone.

1 And as I walked in, DAG Rosen's phone, cell phone, started ringing. He took it
2 out, he looked at it. He looked a little perplexed, like he was deciding whether to
3 answer it. And I said, "Sir, I think that's the White House. You should answer it."

4 He answered it, and I heard him say, "Yes, I can hold." And he began walking
5 back toward his office. I followed him into his office. I took a Post-it note, I wrote
6 "POTUS will ask you to be Acting AG upon Barr's departure," and I handed it to him. He
7 nodded. I walked out of the room, closed the door, and I told the people assembled
8 that the meeting was over.

9 Q I see.

10 A They all left. And, after a few minutes, he came to my office and told me
11 about his conversation with the President.

12 Q And he was thereafter named to be Acting Attorney General upon AG Barr's
13 departure -- he, Rosen?

14 A Right. There was a tweet, or several tweets, that went out shortly after
15 that from the President's account that said AG Barr has submitted his resignation, he'll be
16 gone by Christmas, and that DAG Rosen will be the Acting Attorney General and that I
17 would be in the position of the Deputy Attorney General.

18 Q Do you have any idea, Mr. Donoghue, why the President contemplated -- or,
19 actually, offered you, leaping over Rosen, the position of Acting Attorney General?

20 A No. I'd had very limited contact with the President. From, I think, January
21 of 2019 until December of 2020, I'd had no contact with him. I hadn't seen him, hadn't
22 spoken to him for an extended period of time.

23 I had interacted with the President as the U.S. attorney in the Eastern District of
24 New York. It's his home district. He's very interested in what goes on there. He was
25 very interested in our MS-13 prosecution program. He and I had discussed that way

1 back when, in 2017 and 2018.

2 But there was a long period of time when I had no contact with the President.

3 So the notion that he was considering me for that surprised me.

4 Q So he was familiar with your work in the Eastern District of New York and
5 you'd had some conversations with him about that in the past?

6 A Yes. I'd had conversations with him relating to the MS-13 work. I'd had
7 conversations with him during a bill signing in the Oval Office about some of our human
8 trafficking work. And he also called to congratulate the trial team when El Chapo was
9 convicted and when El Chapo was sentenced, so I had two phone calls from him on that
10 case. So he was aware of the case.

11 Q I see.

12 During the conversation with you that night that you just described, did he say
13 anything disparaging about Jeff Rosen or express any concern about Rosen's fitness to
14 serve as Acting Attorney General?

15 A No, not at all.

16 Q Okay.

17 [REDACTED] All right. I am going to pause here and see if any of the members
18 of the select committee have any questions.

19 Ms. Cheney, we're going to start with you. Do you have anything?

20 Ms. Cheney. Thanks, [REDACTED]. I did have a question, a couple questions.

21 One is: Mr. Donoghue, we talked at some length about whether or not the
22 White House or the President was informed about the Antrim report. On the result of
23 the investigations, the interviews that had gone on on Fulton County, how would those
24 results have been communicated to the White House, to the President?

25 Mr. Donoghue. I don't know how they were initially communicated. I do know

1 that they came up in subsequent conversations with the President. And DAG Rosen and
2 I essentially told him, "We looked into that, and it's just not true."

3 Ms. Cheney. Okay. So he was informed?

4 Mr. Donoghue. I told the President myself that several times, in several
5 conversations, that these allegations about ballots being smuggled in in a suitcase and
6 run through the machines several times, it was not true, that we had looked at it, we
7 looked at the video, we interviewed the witnesses, and it was not true.

8 Ms. Cheney. And that timeframe of those -- when you informed the President,
9 do you have a sense of the dates when that would've occurred?

10 Mr. Donoghue. I believe it was in the phone call on December 27th. It was also
11 in a meeting in the Oval Office on December 31st. I believe I mentioned that specifically
12 both times.

13 Ms. Cheney. Okay.

14 Okay. And then do we have a date for the briefing that you mentioned with AG
15 Barr, Rosen, Wray? I think this would've been the briefing with CISA about the Antrim
16 County.

17 Mr. Donoghue. I don't remember specifically. It may be on a calendar
18 someplace. But we did that somewhere between December 14th and December 18th.
19 Because --

20 Ms. Cheney. Okay.

21 Mr. Donoghue. -- the email from Ken Cuccinelli on December 18th was pursuant
22 to that briefing and the discussion we had at the briefing.

23 Ms. Cheney. Okay.

24 And then, just to note for the record -- and, [REDACTED], you might have done this,
25 but -- the exhibit 3, that email that we received, the subject line here is "From POTUS." I

1 think that's -- it came from the President's secretary, and it seems to indicate that he
2 asked that it be sent. That's the Antrim County report that was later found to be false.

3 And that's all I've got. Thank you.

4 BY [REDACTED]:

5 Q All right, Mr. Donoghue. Just a couple more things before we move on to
6 something new.

7 You mentioned earlier that there was tension between Attorney General Barr and
8 the President. Did that go back prior to the December 1st public statement about
9 election fraud? In other words, was the tension something that stemmed from that
10 statement or predated the statement, to the extent you know, that you observed?

11 I'm sorry, I'm not -- for whatever reason, you're muted again.

12 A Okay. Can you hear me now?

13 Q Yes. Thank you.

14 A I would say it predated that statement. The Attorney General was clearly
15 frustrated in November.

16 Q Uh-huh. And any idea from him or other sources as to why he was
17 frustrated? What was the impetus of that frustration?

18 A I really think he'd have to answer that. I mean, I can just give you my
19 impression from working with him every day. And it seemed --

20 Q Yeah. I'm interested in your impression from working with him every day.

21 A He was clearly frustrated. Every time he came back from the White House,
22 he was irritated. He just was not happy with the way things were going.

23 And I think that was understandable. I think he was in a very difficult position;
24 the Department was in a very difficult position. The President seemed to clearly believe
25 that there was widespread fraud and that the election had been stolen, and he wanted

1 the Department to do something about it.

2 And, to some extent, we were, but, at the same time, we have a very limited role
3 in all this. The President didn't seem to understand that we, the Department, have a
4 very limited role. And we had to explain that to the President repeatedly after AG Barr
5 left. I would imagine that he was having similar conversations with the President prior
6 to his departure, but he wasn't giving me the details of those conversations.

7 Q I see. So the tension surrounded the Department's limited role in
8 elections? Or is it your view that it was broader than that, that it extended to other
9 issues on which they had interaction?

10 A I don't think it was limited to the election.

11 Q What -- again, your impressions? I understand that this is just based on
12 your conversations with him or others. What other sources of tension were there?

13 A You know, again, I wouldn't want to speculate. And I say that only because,
14 you know, it appeared to me that there was frustration even before the election and
15 certainly before December 1st. Attorney General Barr and the President are very
16 different personalities, and they have very different approaches to things. And so I
17 would imagine it was a difficult time for the Attorney General.

18 Q Yeah. I understand.

19 All right. One last question. Did Mr. Rosen tell you anything about his
20 conversation with the President when he was offered the AG job? Did he provide any
21 quotes or comments or color to that conversation?

22 A He did. It was very short, the phone conversation was very short, because
23 he came into my office within a few minutes of him getting the phone call in the
24 conference room.

25 And he said, "Spoke to the President. He did ask me to serve as the Acting

1 Attorney General. I told him I'd be happy to do that. He wanted to make sure that
2 you," meaning me, "stayed on as the Deputy," and I told him that would happen. "And
3 he wished us well, and he thanked us for sticking around until the end."

4 Q Yeah.

5 Do you know whether or not, Mr. Donoghue, the President had had as much
6 interaction with Mr. Rosen at that point as he had had with you? I mean, you
7 mentioned the bill signings and the personal calls about El Chapo. Do you know
8 whether he'd had similar interaction with Mr. Rosen, or was he less familiar with
9 Mr. Rosen at that point?

10 A I knew that he'd had some. DAG Rosen was at Transportation before
11 coming over to the Department. I can't really tell you what the level of interaction was,
12 but I knew that he had some. He'd have to explain that to you.

13 Q I see.

14 Okay. I am going to move into, now, the time after Attorney General Barr leaves.
15 Are you okay to keep going, or do you need a break? I mean, this is a new --

16 A I'm fine.

17 Q It's a convenient place to stop, unless you want to keep going.

18 Mr. Andres. Maybe we should take 5 minutes, [REDACTED]

19 [REDACTED]. Yeah. Let's take 5, Greg. That's no problem. Thank you.

20 Mr. Donoghue. Okay. Thanks.

21 [Recess.]

22 [REDACTED] All right, Mr. Donoghue, we're back on the record. Thank you.

23 BY [REDACTED]:

24 Q I want to move, now, to the time in which you were essentially serving as the
25 Acting Deputy Attorney General, albeit without that title, and call your attention to some

1 contacts that you had in that role with the former President and others in the White
2 House.

3 And I want to start with the call on December the 27th and call your attention to
4 exhibit 6, which I understand is --

5 A Yes, I have it.

6 Q Now, is exhibit 6, Mr. Donoghue, contemporaneous notes that you actually
7 took as this telephone call was going on?

8 A Yes.

9 Q All right. Tell us, first of all, the circumstances of how it is that you ended
10 up on the phone on December 27th with the President and others. How did you get
11 involved in that conversation?

12 A I traveled back to New York on December 24th for Christmas. I was up
13 there for a couple of days. I think the 27th is a Sunday. I was preparing to go back to
14 Washington that evening.

15 I was at home on Long Island, and my government cell phone rang. It was Acting
16 Attorney General Rosen. I answered it. And he said, essentially, "Hey, I'm on the
17 phone with the President. We've been on for about 30 minutes. He's talking about
18 some of this election stuff. You know it better than I do. Do you mind if I conference
19 you in?" And I said, "Sure. Of course. That's fine." And he conferenced me in to
20 the call with the President.

21 Q Okay. And were you -- again, your understanding, Mr. Donoghue, that you
22 were conferenced in because there was going to be discussion of the stuff with which
23 you'd been personally involved, the election-related matters in the U.S. attorneys'
24 offices?

25 A Right. Throughout this time, I had a better handle on what the Department

1 was aware of and what we had done than the Acting Attorney General did. So he often
2 relied on me to provide that information to him at least, if not the President.

3 And, again, just to remind you, our general approach with regard to these things
4 was to say, you know, "Yes, sir, we're aware of that. Thank you." If there was an
5 instance, as there was here, where he, the President, raised something we were not
6 aware of, we would say, "Okay. We're not aware of that, but thank you," and do
7 whatever we deemed appropriate with it.

8 Q Yeah.

9 What I'd like you to do -- I appreciate that, Mr. Donoghue. I'd like you to just
10 sort of walk us through your notes, using them -- sort of read them to us and tell us, if you
11 can, more about the discussion that's reflected in those notes.

12 A Okay.

13 So it's 12/27/20. It says, "DAG call." I refer to Jeff Rosen as the "DAG" through
14 most of my notes and emails even while he was the Acting Attorney General.

15 It says, "DAG call -- on with POTUS and wants to conference me in."

16 "P" -- which means "President" -- "Country is up in arms over the corruption."

17 "Scott Perry" -- I have a parenthetical that says "PA," Pennsylvania -- "and Senator
18 from Pennsylvania, Greg Mastriano -- some of the" -- I'm sorry, I can't make out that
19 word -- something "calling."

20 Q Uh-huh.

21 A "205,000 votes -- more than they have voters in Pennsylvania."

22 "Flooded the market with ballots."

23 "600,000 votes added -- 570,000 votes for Biden, few for me, and lots of blanks."

24 "0332" -- hours in the morning -- "flooded the market, multiple States, all at
25 once."

1 "Jim Jordan" --

2 Q All right, let me stop you there. I want you to just tell us what you
3 remember about this allegation about Pennsylvania in terms of the "more than they have
4 voters," what that involved and what you at the Department were familiar with and did
5 about that allegation.

6 A So, again, I tried to keep on top of the allegations as they were surfacing and
7 just make sure that the U.S. attorneys were aware of them. Or, in many instances, the
8 U.S. attorneys were already aware, and they made me aware of them.

9 The reason I took notes in this meeting is because it started with this allegation
10 that I'd never heard of. And so the President was saying, essentially, the Pennsylvania
11 secretary of State certified 205,000 more votes than were actually cast in Pennsylvania.
12 Sometimes he would say 205; sometimes he would say 250. So you see it changes a
13 little bit in the notes. But, essentially, the allegation was that the secretary of State had
14 certified more votes than were actually cast in the State of Pennsylvania.

15 And, from what I recall, the President was saying, "This is clear fraud. It's right
16 there out in the open. You don't even have to investigate; you can just look on the
17 internet and see her certification and see the official count and see the difference of
18 several hundred thousand votes. It's clear that this is fraud." That's essentially what
19 he was saying about Pennsylvania.

20 And since I had not heard that particular allegation before, I began taking notes,
21 because I thought, well, we better understand what he's saying here so that we can
22 decide what, if anything, we should do about it.

23 Q Yeah.

24 And then you have a followup --

25 A He mixes this --

1 Q -- call with Congressman --

2 A I'm sorry. He mixes this with some other allegations, which obviously
3 relate to other States, where he's talking about what he was calling, you know, a dump of
4 ballots in the middle of the night, things like that.

5 Q Yeah.

6 And you have a subsequent call with Congressman Perry about that, is that right,
7 after this is over with?

8 A It was later that night, because I was in the vehicle going back to
9 Washington. And you'll see, I think, at the end of these notes from the 27th, the
10 President asked for my cell number, which he already had anyway, but -- and he said, you
11 know, I might have people call you with evidence. Okay, fine.

12 Q Got it. All right. We'll get to that.

13 A And so the Congressman --

14 Q Yeah, we'll get to that. Let's just keep going through the notes. I wanted
15 to make sure I was clear that that was all about Pennsylvania.

16 So I think you left off with Jim Jordan.

17 A Right. So he made a passing reference to Jim Jordan. He said, "That guy's
18 a fighter."

19 He was saying how several people out there, Jim Jordan and others, were trying to
20 find out what happened with regard to these various fraud allegations and that they were
21 doing what they could but that their authority was limited, and so, you know, this is
22 something the Department should be aware of, these are things the Department should
23 be looking at.

24 So it says, "We're like a Third World country." He was essentially saying, you
25 know, if our elections are not trustworthy, we will be relegated to Third World country

1 status.

2 He mentioned Detroit. He said, "Look at the districts in Michigan. Won nearly
3 all but not Wayne County." And I put in parentheses "Detroit."

4 The call dropped at that point, and there was a break of a few minutes. And I
5 think I called DAG Rosen back, and that immediately put me back into the conference
6 conversation. The President was still talking.

7 He said, "We have thousands of people who went in to vote and were told you
8 already voted by absentee ballot."

9 "People are angry. They're blaming DOJ and others for inaction."

10 We talked about the statistics. He said, if you look at this statistically, "election
11 night, it was a done deal. Somehow, overnight, the outcome changed because all these
12 ballots showed up" in the middle of the night in States like "Arizona, Georgia, and
13 Pennsylvania."

14 He said, this is a huge problem, and it's not just this election. "People won't have
15 confidence in the Georgia senate races" that are coming up.

16 He said, "Georgia, Nevada, Arizona, Michigan" all had "corrupted elections."

17 "People are complaining to him constantly" about the fraud and why nothing's
18 being done about it.

19 He said, "Thousands of people had called their U.S. attorney's offices and the FBI"
20 around the country.

21 He complained that "DOJ is failing to respond to legitimate complaints and reports
22 of crimes."

23 He then got back to Pennsylvania, and he said there were "5 million votes in the
24 State" --

25 Q Let me stop you for a minute before you get back to Pennsylvania. So this

1 is a phone call with you and Mr. Rosen. It's just the three of you -- you and the
2 President and Mr. Rosen?

3 A As far as I know. I don't know of anyone else being on that call.

4 Q And he is frustrated with you. Like, the theme here is that you all, meaning
5 the Department of Justice --

6 A That's correct.

7 Q -- are not doing anything, are not doing enough to investigate these very
8 serious allegations of fraud.

9 "DOJ failing to respond to legitimate complaints/reports of crimes." That line
10 seems to, sort of, summarily describe his general view about the Department's inaction
11 during this period of time. Is that right?

12 A Yes, that's right.

13 Q Okay. And is he encouraging you to do something? Is the purpose of the
14 call, in your view, hey, you've got to look at this, you know, do more along these lines?

15 A I will say, throughout this call and really throughout all the conversations at
16 this point, there was no point at which the President directed us to do something specific.
17 He didn't say, I want you to open a file, I want you to interview this witness, or whatever
18 it is. But it was very clear that he thought we should be doing more than he believed we
19 were doing.

20 Q Yeah.

21 A Now, that might have been due in some part to the fact that we didn't tell
22 him everything we were doing. DAG Rosen and I had had several discussions about
23 what our general approach would be with the President. And, as a general matter, we
24 said we were going to hear him out, and to the extent he raised things that we were
25 aware of, we would simply respond, "Yes, sir, we're aware of that." If we had done

1 enough investigation to dispel it, we would simply report, "We looked at that, and that's
2 not true," or, "We looked at that, and there's no evidence to support that."

3 Q What --

4 A So he would know --

5 Q I'm sorry. Go ahead. I'm sorry.

6 A So that he would know that, in fact, we were doing our job and what our
7 conclusion was. But we were not telling him specifics about individual investigations or
8 anything like that.

9 Q Tell me more about that last statement, Mr. Donoghue. Why did you and
10 Mr. Rosen have concern about providing him with more specific information about the
11 Department's efforts? What was the, sort of, negative outcome that could ensue from
12 providing him with that level of detail?

13 A We just didn't think it was necessary, frankly. And he wasn't asking for it.
14 He wasn't asking about how many witnesses did you interview, and what did you do, and
15 things like that.

16 The problem, or part of the problem, was there were so many of these allegations
17 that, when you addressed one, you said, "Mr. President, thanks, we looked at that, but
18 there's nothing further to be done there," he would just roll on to another one. And so
19 he had this stream of allegations, which were clearly being fed to him by a number of
20 people, that he would keep referring our way.

21 And, again, if we didn't know about it, like this Pennsylvania one that he raised
22 here, we would say, "Okay, I hadn't heard of that, thank you." But, for the most part,
23 we would say, "Yes, we're aware of that."

24 So he was frustrated, and his frustration obviously increased over time.

25 Q Okay.

1 If you can go back to your notes, I think you can go back to "Pennsylvania" here at
2 the top of page 3.

3 A So then he goes back to Pennsylvania. He says, "5 million voters in the
4 State, but they certified 5.25 million votes. That's clear fraud."

5 I have a parenthetical to the left there that says, "Possibly true?" Again, if
6 there's 250,000 more votes certified, there's a problem. But, on its face, that didn't
7 sound like something that was likely.

8 Then he went to Georgia. He's talking about the tape. This is the video of the
9 interior of the State Farm Arena. "The tape there shows fraud."

10 Underneath that, it says, "Ruby Freeman," who was one of the individuals on the
11 tape. Next to that, it says, "Huckster." Then it says, "Closed the facility and then came
12 back with hidden ballots under the table."

13 Also, to the top right there off of "Huckster," I wrote, "Election scammer." That's
14 just how the President referenced her.

15 Underneath, it says, "Networks," meaning the television networks, "magnified the
16 tape and saw them running them," the ballots, "through repeatedly."

17 So that's what he was relaying with regard to the video at the State Farm Arena.

18 Q And that is one, at that point, Mr. Donoghue, that were familiar with and
19 you had already -- there had already been some investigation done, as evidenced by that
20 email exchange with Michael Bowdich before.

21 A Yes. Yeah. I don't remember if that review, investigation, was completed
22 at that point or not. I think it was. But, yes, I was aware of that.

23 Q Okay.

24 All right. Keep going.

25 A Then the President said, "You guys may not be following the internet the

1 way I do." I wrote that down in quotes. That's an exact quote from the President.

2 Q When you do write in your notes something in quotes does that reflect a
3 verbatim quote from the President?

4 A Yes.

5 Q Okay. So he said, "You guys may not be following the internet the way I
6 do," and you wrote it down as he said it.

7 A Yes.

8 Q Okay. Great.

9 Keep going.

10 A Then he went back to Detroit. He said in Detroit they "threw the poll
11 watchers out." He was complaining, saying they're not allowed to do that, it's a
12 violation of the law, they had violated the law all over the country.

13 He said, you "don't even need to look at the illegal aliens voting -- don't need to.
14 It's so obvious."

15 Then he was talking about the FBI. He said, the "FBI will always say there's
16 nothing there. The leaders there oppose me; SAs," which means special agents,
17 "support me." He didn't use the term "special agents," but he said, "the agents" or "the
18 line guys," something like that, "support me." I just wrote that down as "SAs."

19 Q Yeah. He's claiming that the FBI leadership somehow is against him or isn't
20 taking these claims seriously because they dislike him or they oppose him?

21 A Correct.

22 Q Was that consistent with your impression of Director Wray and the FBI
23 leadership?

24 A No.

25 Q Okay.

1 A Then the next page, this is him continuing about the FBI. He says, "I made
2 some bad decisions on leadership there, but I was laboring under an illegal investigation.
3 The special prosecutor should never have been commenced."

4 Then he says -- he was complaining about the appointment of the special
5 prosecutor, and he says, "You," meaning DAG Rosen and I, "figure out what to do with
6 Hunter Biden." That's up to you guys. But "people will criticize the DOJ if Hunter's not
7 investigated for real."

8 That was sort of an aside. That's all he said about it. It was a very brief
9 comment. But it was off-topic, and I wrote it down.

10 Q All right.

11 All the way at the top there --

12 A Also --

13 Q -- you have in parentheses "TN" -- "that whole thing, angry." Tell me what
14 that is about.

15 A Right. So "TN" is Tennessee. Again, this was another aside. The
16 President has a very unusual way of speaking. He's got a lot of tangents that go into his
17 train of thought.

18 And so he mentioned Tennessee. He said, "That whole thing, crazy. Talked to
19 the Governor there." He's -- or she is "also upset."

20 That was a reference to an explosion that took place on Christmas morning in
21 Nashville, where an individual had packed his mobile home with explosives and
22 detonated it early that morning. And so that was in the news. And the U.S. attorney
23 was deeply involved, and we were dealing with that throughout Christmas. So the
24 President just made reference to that.

25 Q Okay. So, in the middle of this call where he's ranting about election

1 issues, he mentions the special counsel, he mentions the explosion in Tennessee, he
2 mentions FBI -- allegations that the FBI doesn't like him, and he mentions Hunter Biden.
3 All of that --

4 A Yes.

5 Q -- just are part of the tangents that you referenced in terms of his manner of
6 speaking?

7 A Correct.

8 Q And any response by you or Mr. Rosen to any of those specific --

9 A So, throughout this -- the President, obviously, does the great majority of the
10 talking. But, throughout this, both DAG Rosen and I are just trying to respond very
11 specifically to what he's saying and saying things like, "Okay, that's fine, sir." This thing
12 about Pennsylvania having more votes than ballots actually cast, "We can look at that,
13 we'll figure that out."

14 You know, as far as some of this other stuff, we were saying, "We're aware of it.
15 We've looked at it. We've got it," or, "There's nothing there." I can't remember if we
16 were at the point -- I think we were at the point in Georgia to be able to say that we had
17 looked at that and did not believe that to be the case.

18 Q Yeah. That's the next section of your notes, where you say "Georgia
19 legislature" -- or he talks about the Georgia legislature. Can you pick up from there?

20 A Right. So it says, "Georgia legislature is on our side. They want to bring a
21 case, but the Governor won't let them," meaning they want to file some sort of civil case.
22 The Governor won't let them.

23 He then goes back to the statistics. He says, "Statistically impossible for me to
24 lose. Bookies had me at 100 percent on election night. It dropped to 32 percent in
25 4 or 5 hours. That's never happened before."

1 So now this is an example of DAG Rosen responding. And he said essentially,
2 "We'll look at whether we have more ballots in Pennsylvania than registered voters.
3 Should be able to check that out quickly. But understand that the DOJ can't and won't
4 snap its fingers and change the outcome of the election. It doesn't work that way."

5 Q So DAG Rosen directly says, "We cannot snap our fingers and change the
6 outcome of the election. It doesn't work that way." Clear pushback to the President
7 looking for some sort of Department of Justice finger snap to delay the results of the
8 election.

9 A Yes, that's what he said. And he was, to some extent, pushing back and --

10 Q Yeah.

11 A -- trying to make the President understand the Department's role.

12 Q Yeah. So what does the President say in response to that pushback from
13 Mr. Rosen?

14 A He says, "I don't expect you to do that. Just say that the election was
15 corrupt and leave the rest to me and the Republican Congressmen."

16 Q Tell me more about that. What you did you interpret that to mean?

17 A So I put it in quotes. It is an exact quote from the President.

18 I took that to mean that he and his campaign, I suppose, were going to be
19 pursuing a political effort on the Hill to challenge electoral college votes.

20 And we knew that was the case already. There was already public reporting on
21 this. So I think the President and some of his supporters were talking about challenging
22 electoral college votes when they made it to the Senate.

23 And so that didn't surprise me, that he had this avenue that he intended to pursue
24 with what he called the "Republican Congressmen." So --

25 Q And the Department's role in that, Mr. Donoghue, is to say the election was

1 corrupt, that he's asking, essentially, not for you to resolve all of these specific
2 allegations, but just say that the election was corrupt, leave the rest to this political
3 strategy?

4 A Right. So the Department had zero involvement in anyone's political
5 strategy. I think he understood that, right?

6 Q Uh-huh.

7 A So he wanted us to say it was corrupt, you know, for whatever reason. I'll
8 leave that to him or others to explain or determine. But he wanted us to say that it was
9 corrupt.

10 And this was consistent with some things he said at other points about, the
11 Department should publicly say that the election is corrupt or suspect or not reliable. At
12 one point, he mentioned the possibility of having a press conference. We told him we
13 were not going to do that.

14 Q Yeah.

15 A So this was something that was brought up more than once.

16 Q Yeah. So, again, there was a focus on public statements that something
17 was corrupt, as opposed to trying specifically to get to the bottom of the individual
18 allegations.

19 A Right.

20 Q All right. You at this point start talking. Is that right? You
21 directly -- "RPD" I assume, Mr. Donoghue, refers to statements that you now made on the
22 call.

23 A Yes. So I tried to, again, put this in perspective and to try to put it in very
24 clear terms to the President. And I said something to the effect of, "Sir, we've done
25 dozens of investigations, hundreds of interviews. The major allegations are not

1 supported by the evidence developed."

2 We've looked in "Georgia, Pennsylvania, Michigan, Nevada."

3 "We are doing our job. Much of the info you're getting is false." And then I
4 went into, "For instance, this thing from Michigan, this report about 68 percent error
5 rate -- reality is, it was only 0.0063 percent error rate, less than 1 in 15,000."

6 So the President accepted that. He said, "Okay, fine. But what about the
7 others?"

8 And, again, this gets back to the point that there were so many of these
9 allegations that, when you gave him a very direct answer on one of them, he wouldn't
10 fight us on it, but he would move to another allegation.

11 So then I talked a little bit about the Pennsylvania truck driver. This is another
12 allegation that had come up. And this claim was by a truck driver who believed, perhaps
13 honestly, that he had transported an entire tractor-trailer truck full of ballots from New
14 York to Pennsylvania. And this was, again, out there in the public and discussed.

15 And I essentially said, look, we looked at that allegation, we looked "at both ends,"
16 both the people who load the truck and the people who unload the truck, and that that
17 allegation was not supported by the evidence.

18 Again, he said, "Okay." And then he said, "Note, I didn't mention that one.
19 What about the others?"

20 And I said, okay, well, with regard to Georgia, we "looked at the tape, we
21 interviewed the witnesses. There is no suitcase." The President kept fixating on this
22 suitcase that supposedly had fraudulent ballots and that the suitcase was rolled out from
23 under the table. And I said, no, sir, there is no suitcase. You can watch that video over
24 and over; there is no suitcase. There is a wheeled bin where they carry the ballots, and
25 that's just how they move ballots around that facility. There's nothing suspicious about

1 that at all.

2 I told him that there was "no multiple scanning of the ballots." One part of that
3 allegation was that they were taking one ballot and scanning it through three or four or
4 five times to rack up votes presumably for Vice President Biden. I told him that the
5 video did not support that.

6 Then he went off on "double voting," at the top of the next page. He said "dead
7 people" are voting, "Indians are getting paid" to vote. He meant people on Native
8 American reservations. He said, there's "lots of fraud" going on here.

9 Then he said, in Arizona, "I only lost by 9,000 votes. There's clearly more fraud
10 than that" just in Arizona alone.

11 Then he got into these civil cases that were being brought around the country,
12 and he says -- and I think this was in response to DAG Rosen saying, look, the Department
13 has nothing to do with many of these allegations. To the extent you want to challenge
14 the way that the election was conducted in various States -- we understood that there
15 were complaints about the rules being changed by certain State officials after the fact and
16 that it was not done pursuant to State legislatures' power.

17 DAG Rosen tried to say, we, the Department, have nothing to do with that.
18 You're free to bring lawsuits. Your campaign can bring lawsuits. That can be litigated
19 before judges. But we, the Department, don't do that. We do, essentially, criminal
20 investigations and civil-rights matters.

21 And so the President's response was, well, the "judges keep saying, where's the
22 DOJ? Why is the DOJ not filing these cases?" And we both responded, "we," the
23 Department, "are not in a position based on the evidence. We can only act on the
24 actual evidence developed."

25 My next note says, "Told him flat out that much of the information he's getting is

1 false and/or just not supported by the evidence. We look at the allegations but they
2 don't pan out."

3 The President was getting very frustrated. He said, "This is electioneering fraud."

4 And then, again, I have a quote from him: "We have an obligation to tell people
5 that this was an illegal, corrupt election."

6 Then he said, "People tell me Jeff Clark is great" and that "I should put him in.
7 People want me to replace DOJ leadership."

8 At which point I responded, sir, that's fine, you should have the leadership you
9 want, but understand, changing the leadership in the Department won't change anything.
10 The --

11 Q All right. Let me stop you there.

12 A -- Department operates --

13 Q Let me stop you there, Mr. Donoghue. Just two things.

14 So, going back to, "We have an obligation to tell people that this was an illegal,
15 corrupt election," is it fair to say that what he was asking you to do, primarily, was tell
16 people, in some form, a press conference or otherwise, that there was corruption so that
17 some other political strategy could unfold? Was it your impression that the precise ask
18 from the President was more about a public statement than actually the day-to-day
19 investigative work?

20 A I think he probably cared about both of them, but -- I don't want to
21 speculate about what was in his mind, but this is what he said. And I think what you
22 take away from that, logically, is that he wanted the Department to say something
23 publicly.

24 Q Right. So there's pressure on you and Mr. Rosen, to which you push back,
25 to say something publicly, to say something publicly without basis, that there is an illegal,

1 corrupt election, when your investigation suggested just the opposite.

2 A And I should say too that, in responding to some of these criticisms or
3 observations, you know, DAG Rosen and I did sometimes make the point that, look,
4 elections -- or, any investigation takes time, and you can't just do this overnight, and so
5 on and so forth. So this idea of, "Well, you ought to make a public statement in the
6 meantime" made more sense in the context of the conversation than the notes might at
7 first reflect.

8 Q I see. Okay.

9 And then when he mentions Jeff Clark, had Mr. Clark's name come up with him or
10 with others with respect to allegations of election fraud, or is this the first time that you
11 hear his name associated with this topic?

12 A This was the very first time I heard Jeff Clark mentioned in connection with
13 election matters.

14 Q All right. What was Mr. Clark's job at the Department at this time, on
15 December 27th, when you're on the phone with the President?

16 A He was the Acting Attorney General in charge of the Environmental and
17 Natural Resources Division. That was his Senate-confirmed position. But, when the
18 Acting Attorney General in charge of the Civil Division left a couple of months before, he
19 was moved over to be the Acting Attorney General in charge of the Civil Division, and his
20 deputy was running the Environmental Division.

21 So he was in an acting position over the Civil Division, which has very little
22 responsibility with regard to election matters. So it was odd that he was being
23 mentioned in connection with election matters.

24 Q All right. So you hadn't had any personal conversation with Mr. Clark or
25 even heard about him being involved in any of the election-related matters with which

1 you were familiar up to that point?

2 A That's right. I had no reason to think he had any involvement in any
3 election matters.

4 Q And his substantive responsibility as head of the Civil Division would not put
5 him in a position to be involved in any of those investigations. Is that right?

6 A Correct.

7 Q Okay.

8 All right. Keep going, then, in terms of what the President said.

9 A So, again, I tried to be very direct with the President at this point. I said,
10 sir, you should have whatever leadership you want in the Department, but understand,
11 changing leadership is not going to change the outcome. The Department acts on facts
12 and evidence. And the facts are what they are, the evidence is what it is, and it's not
13 going to change.

14 At that point, the President said, "You, Rich, should go to Fulton County and do a
15 signature verification, and you'll see how illegal it is. You'll find tens of thousands" of
16 illegal ballots. I didn't respond to that.

17 The President then continued, there are "more votes than voters." Somehow
18 Wisconsin came up. I guess he cited Wisconsin and some claim that there were more
19 votes than registered voters in Wisconsin. But I was aware of that allegation, and I said,
20 you know, that was just a matter of them "comparing the 2020 votes cast to 2016
21 registration numbers." That is "not a valid complaint." The voter rolls grow cycle after
22 cycle, and that's just normal population growth.

23 And the President said, "Nobody trusts the FBI." That's also a quote. He said,
24 we need other people to look at this, to work on this.

25 And then he went back to Fulton County and said, "I'd like to request" that you go

1 to Fulton County and check the signatures.

2 Q All right. Is this different -- is this -- you had said before that he was just
3 talking about what people are saying. Is this now -- and your quotes suggests this is
4 what the President said, "I'd like to request" -- him actually making a specific direction or
5 request that the Department take some action?

6 A Yes, it's a specific ask. He asked that I go to Fulton County, Georgia, to
7 participate in some sort of signature verification process.

8 I wrote it down in quotes. I thought it was interesting that he phrased it that
9 way. It was, to some extent, an example of him recognizing that he can make requests,
10 but he was not directing specific actions.

11 Q I see. Okay. So you interpreted that as a request, not a direction.

12 A Yeah, it was. And I didn't go to Fulton County. So I took it as a request,
13 and I treated it as such. And there was no reason for me to go to Fulton County, so I
14 didn't go.

15 Q Okay.

16 A And the DAG responded to that. He said something to the effect of, "We
17 will take that into account," meaning, we will take your request into account.

18 Then he says -- the President said something about, "These people who are saying
19 that the election isn't corrupt are," themselves, "corrupt."

20 There's "not much time left."

21 He asked for my cell phone number, which, again, he already had. But he said, I
22 may have people call you with relevant information. I said, that's fine. You know,
23 people are free to provide whatever information they may have, and we will treat it
24 accordingly.

25 Then he said, "Senator Johnson has done a great job getting to the bottom of

1 things. And that's been done in public, unlike the DOJ investigations." Because we've
2 told him, look, there are things that are not public; that doesn't mean we're not doing our
3 job.

4 Then, in Nevada, he made some reference to Nevada and said "forensic
5 accounting shows we won by 250,000 votes."

6 Then he mentioned someone named "Mark Martin." He said he was a North
7 Carolina Supreme Court justice. He's "retired." He's a real "scholar." He knows
8 about this stuff.

9 And then he made a final comment about "'ballot drops' changed the election."
10 He'd referenced this a number of times, that at 3 o'clock in the morning a whole bunch of
11 ballots showed up in various swing States disproportionately in favor of Vice President
12 Biden and that changed the outcome of the election.

13 Q All right.

14 How did the call end?

15 A It ran about 90 minutes or so after I was on, and then we sort of left it at
16 that. The President made his points, we responded, and that was that.

17 Q I am just curious, Mr. Donoghue, about how you felt about this. You get off
18 the phone call after 90 minutes with the President going through the allegations that
19 you've just described. What was your overall reaction?

20 A I actually felt that, you know, in some way, it was a good opportunity to be
21 able to say to him directly that we had done our job, we had looked at certain things, and
22 that the information that he was being given was not true.

23 Because it was clear to me that a number of people had the President's ear.
24 They were feeding him information. They were telling him things like, "This is obvious
25 fraud. The Department's not doing its job. The Department's dropping the ball."

1 And it gave us an opportunity to say in response that that wasn't the case, that we
2 were doing our job. And I had hoped, certainly, that by giving him clear responses on
3 some of these points that it would help the President understand that these allegations
4 were not supported by evidence.

5 Q Was it your impression by the end of the call that that had worked, that he
6 had been convinced that these allegations had no merit or that the Department and the
7 FBI had, in fact, been doing their jobs?

8 A Not overall, necessarily. It was clear that he still believed that he'd won the
9 election and that the different outcome was the result of corruption. But I think on
10 some of these individual allegations he did accept it. So, when we pushed back on an
11 individual allegation, as I said, he seemed to accept our explanation, but then he would
12 move on to another allegation.

13 Q Yeah.

14 Did he mention any other person beyond those that are reflected in your notes?
15 For instance, when he said, just say the election is corrupt and leave it to the Republican
16 Congressmen, did he say who, specifically, those Republican Congressmen were?

17 A No.

18 Q If he mentioned a name, would it be reflected in these notes?

19 A Yes, I think so.

20 Q Okay.

21 All right. Let me pause there and see if, Ms. Cheney, if you or -- I don't if anyone
22 else from the committee is on -- have any questions about this particular phone call.

23 Ms. Cheney. Thanks, [REDACTED]

24 Yeah. Just to confirm, so this phone call is happening on December 27th. Is
25 that right?

1 Mr. Donoghue. Yes, ma'am.

2 Ms. Cheney. And, for context, the electoral college had met and voted on
3 December 14th. And so, by the time of this phone call, we had had 50
4 Governors -- Governors of each of our States had already certified the election results in
5 each State.

6 Mr. Donoghue. Yes, that's right.

7 Ms. Cheney. Okay.

8 And so, you know, I guess you touched on this a little bit when you mentioned
9 DAG Rosen saying the Department of Justice has nothing to do with this, you're free to
10 bring suits. And, in fact, by this point, the President or his campaign had brought over
11 60 suits in State and Federal court in accordance with State laws, as the Constitution
12 provides. In each of these States, they had already brought suit challenging the results,
13 bringing these claims.

14 And so I just -- in terms of this idea -- did that enter into your thinking? I mean,
15 as we listen to you talk about the way you were describing for the President the fact that
16 Department of Justice was investigating these claims, it really was the case that any
17 legitimate claim had already been brought, had been adjudicated, as provided by State
18 law, and, in fact, the electors had met and voted.

19 So I'm a little -- I guess I'd like to understand a little bit more about, sort of, the
20 open-ended nature of continuing to have the discussions about investigating fraud once
21 the constitutionally prescribed system had taken place.

1

2 [12:06 p.m.]

3 Mr. Donoghue. So it was clear to us that the President didn't fully understand
4 the Department's role in election matters. And we repeatedly tried to explain to him
5 that, essentially, what we do is not quality control for State-run elections. That's not our
6 role. We have primarily two roles: One is investigations of criminal conduct. And
7 the other is civil rights litigation and related matters.

8 So, if a particular group is discouraged from voting or precluded from voting or
9 something like that, that's certainly a legitimate DOJ concern, and we would act on that.
10 If there is criminal conduct, such as fraudulent ballots, and things of that nature, that's
11 also very much a DOJ concern.

12 Above and beyond that, defects in State-run elections are largely out of our hands
13 and out of our responsibility. We could understand why the candidate, the campaign,
14 and others have a real interest in that and have a cognizable interest in that, and so they
15 brought these dozens of suits in part pursuant to those interests.

16 But, in many instances, as the President complained of in this conversation and
17 others, the merits were never reached because the courts were finding that the plaintiff
18 bringing the case didn't have standing. And so we had gone through this in more detail
19 in a subsequent meeting in the Oval Office, but the President couldn't understand how
20 the United States Department of Justice did not have standing to bring civil suits that
21 challenge the way States conducted their elections. In his view, the client of a United
22 States Department of Justice was the American people.

23 And we tried to explain to him, that's not really the case. The client of the
24 United States Department of Justice is the United States Government, not the people
25 directly.

1 And so he -- from a layman's perspective, I certainly understand this -- he believed
2 that we should be bringing these suits and that, if we did, as a Department, bring these
3 suits, they would get adjudicated more on the merits than get kicked out in standing.

4 Now, a number of these cases were addressed on the merits as well, and,
5 ultimately, they were all unsuccessful, including one that went to the Supreme Court.
6 But, similar to some of the others, the Supreme Court one was decided largely on the
7 standing ground. So the President didn't fully understand the role of the Department.

8 Ms. Cheney. Yeah. And I think it's very important to note that a number of the
9 cases were, in fact, decided on the merits. It has become sort of the talking point to
10 assert they were all thrown out, and the merits weren't considered, but a number of the
11 cases were decided on the merits.

12 And so, in terms of the President's -- you know, the question about whether the
13 President, quote, did not understand or did not care, was not troubled by. You know, it
14 seems like you're making an assessment about the President's frame of mind in terms of
15 why he was asking you to do what he was doing.

16 Mr. Donoghue. Well, I certainly don't want to speculate about what was really in
17 his mind, but I can relay what he said and his demeanor. And, throughout, he appeared
18 to believe, one, that he had won the election; two, that the results were somehow
19 corrupted; and, three, that we, the Department, were not doing all that we should be
20 doing to ensure that these matters were addressed. There was nothing he said or did
21 anywhere in this process that indicated that he didn't really believe these things.
22 Whether he did or not, I have no ability to say.

23 Ms. Cheney. Yeah, well, and I think we've seen -- there were a number of
24 instances where you all would tell him the claim he was making was false, and he would
25 later come back and make the same claim again.

1 Mr. Donoghue. That's true.

2 Ms. Cheney. All right. That's all I have got, [REDACTED].

3 BY [REDACTED]:

4 Q Sorry. You'd think by now I would figure out the mute button.

5 Quickly going back to the request, this is the Commander in Chief. Right? This
6 is the President of the United States, and when he says, "I would like to request, Rich,
7 that you go to Fulton County," did you feel pressured to do that? Did you feel like "The
8 Commander in Chief is making a request; I need to follow -- we need to follow through
9 with that"?

10 Tell me more about your calculus as to your ability to not pursue something that
11 he requested?

12 A It was clear that the President wanted us to do some of these things,
13 whether it was going to Fulton County and make a public announcement or something
14 like that. I personally didn't feel tremendously pressured. I have been in the
15 government a long time. I spent many years in the Army. I am the youngest of 12
16 children. I have very thick skin. The DAG, similarly, I think we had a very good
17 understanding of our organization, the organization's mission, and how we were going to
18 execute on it.

19 So the President could say, you know, what he wants. I suppose it would have
20 become a more difficult situation if he actually directed us to do things we were not
21 willing to do. But I think I know how that would have ended. So, you know, while he
22 clearly wanted us to do these things, I think he was careful about the way he phrased it,
23 and we were very firm on what we were going to do and not do. And so, frankly, it
24 didn't bother me all that much. If I had left the Department, that would be fine.

25 Q Got it. And then, in reference to Clark, did you feel like that was pressure

1 or that was meant to suggest to that "Hey, if you don't do it, others will"? Give me a
2 sense of your reaction when he raised Jeff Clark's name?

3 A Certainly it was strange because it sort of came out of left field. And if
4 there was anyone I thought he would have mentioned, it certainly wouldn't have been
5 Jeff Clark. So I was a little taken aback by the reference. But this notion of "Well,
6 maybe, I should just change leadership, people are telling me I should fire you two," it
7 was sort of a matter of saying: Mr. President, go ahead. If you want to do it, that's
8 fine. You should have the leadership you want. But understand it's not going to
9 change anything.

10 So it didn't upset me. I didn't feel particularly pressured one way or the other.
11 But this was a point he was making that informed the whole discussion, and the
12 discussion had continued over the next couple of weeks.

13 Q Yeah, well, it sounds like, Mr. Donoghue, you didn't feel pressure. It's going
14 to be reflected as we go forward in these other calls.

15 So, later that night, do you get a call, a followup call as he promised, from
16 Congressman Perry, Scott Perry from Pennsylvania?

17 A I did. And I took notes, and those are reflected in tab 7.

18 Q Okay.

19 A I would note the outset --

20 Q Just the 28th, but was the call actually on the night of the 27th?

21 A It was. I misdated that. I apologize.

22 Q Well, just tell us about the conversation with Congressman Perry.

23 A Sure. I apologize for the handwriting. I was in the back of a moving
24 vehicle at the time.

25 So, to Congressman Perry, Pennsylvania, in the left margin, it says:

1 Approximately 1800, 6:00 p.m., in car en route to D.C. Congressman Perry said POTUS
2 asked him to call. He is concerned about the election. He thinks that DOJ hasn't done
3 its job on the election. He sits on the Foreign Affairs Committee. He can't understand
4 why DOJ said nothing about Hunter Biden investigation prior to the election. And I
5 noted that I had no response there. He said he likes Jeff Clark a lot. He thinks he
6 would do something about this, meaning the election allegations. He said something
7 about the FBI. And he talked about the Awan brothers, A-w-a-n, the House of
8 Representatives IT scandal. I was vaguely aware of this, but I didn't know the details.
9 He said: The IG was fired. We asked FBI to interview her. They told her not to bring
10 anything to the interview. She felt like she was the one under investigation.

11 And he said: And I cite this only to show that you the FBI doesn't always do the
12 right thing in all instances.

13 And he said there was a forensic accountant who was a State representative in
14 Pennsylvania looking at open source info. All counties but three -- meaning all counties
15 but three have reported their results. Oh, I am sorry. He, the accountant, had looked
16 at all counties but three. Then I have a parenthetical that says still working on those.

17 Then he said there were 205,000 more votes than voters and that this is clear
18 fraud. He asked if he could send me evidence and send me information about this. I
19 told him we would, of course, be willing to look at that, but, thus far, we haven't seen
20 fraud on a scale to change the outcome in Pennsylvania.

21 On the left, I have -- ask to send -- oh, he asked for my email address, and he will
22 send information that he has relevant to this. So I gave him my email address.

23 Q All right. So a couple of questions about this conversation, Mr. Donoghue.
24 Again, Jeff Clark, does he talk about how he knows Jeff Clark? What's the basis of his
25 statement that he likes Jeff Clark a lot? Did you have any context as to why

1 Congressman Perry was touting Mr. Clark?

2 A No, and I did not ask.

3 Q Okay. And he is essentially repeating consistently with what you had heard
4 earlier from the President about more votes, more voters than -- or more votes than
5 voters, right, more votes counted than registered voters? There's this sort of math issue
6 that the President had raised that Mr. Perry is repeating?

7 A Yes, that's right.

8 Q Okay. And just a context point here, you're in the car. Did you have the
9 DAG's detail, even though you weren't the Acting DAG there? They were driving you
10 essentially back to D.C. from New York?

11 A Yes. That's right.

12 Q Okay. All right. So then do you get -- you send him your email, and you
13 get an email from Mr. Perry later. It looks like, turning to tab 8, Sunday night,
14 December 27th, at about 8:30 p.m., he sends you an email that just says: Sir, as
15 discussed. And it forwards this PowerPoint about this Pennsylvania data that he had
16 referenced earlier. Do you recall receiving that, and did it pertain to what he had said
17 on the call?

18 A Yes. That's right.

19 Q What did you do with that when you got this information from Mr. Perry?

20 A So I was in the back of the vehicle, and I only had an iPhone. So I couldn't
21 really read this in detail anyway. But I opened it. I flipped through it a little bit. I
22 could see it was sort of consistent with some of the points that he had raised in the call.
23 And then I forwarded it to Scott Brady, who was the U.S. attorney in the Western District
24 of Pennsylvania. Again, remember, it's the U.S. attorney who has the responsibility to
25 investigate things in their jurisdiction if they deem appropriate. So I forwarded this

1 entire packet to Scott. We had three U.S. attorneys in Pennsylvania: Middle, Eastern,
2 and Western. I knew Scott the best. We had served on the AGAC together. They're
3 all very good and very competent U.S. attorneys, but I knew Scott best of the three, and
4 so I just sent it to him to be followed up on, if he even deemed it was worthy of following
5 up.

6 Q Right. So, in tab 9, your email to Mr. Brady says: JFYI -- which I assume is
7 "just for your information" -- regarding allegations about Pennsylvania voting
8 irregularities, for whatever it may be worth. When you put that parenthetical at the
9 end, "for whatever it may be worth," what was in your mind?

10 A I had no idea if there was anything to these allegations. Again, we just
11 heard it for the first time that afternoon from the President. The President was very
12 adamant, and Congressman Perry was very adamant that this was clear fraud; You didn't
13 even really have to investigate; you could just look at the reporting on the government
14 websites for the State of Pennsylvania, and it would be clear. But I didn't want Scott to
15 believe that, because I was forwarding this to him, that I had formed any opinion about
16 the reliability of these allegations.

17 Q I see. Did you talk to Scott about it once you sent him the email? Do you
18 recall any phone conversation with him?

19 A I did. I think I talked to him that night. I'm not a hundred percent sure.
20 But I had several conversations with him over the next couple of days. He said he would
21 look into it. And he got to the bottom of it very quickly.

22 Q Tell us what he concluded.

23 A So the secretary of state certified roughly 5.25 million votes from
24 Pennsylvania. And the website that they were referencing reported only about 5 million
25 votes. However, Scott looked into it, and he got back to me within a day or two and

1 said: Look, the reason that there is a difference between the 5.25 reported by the
2 secretary of state and the State's election website is that the State election website is
3 behind in reporting. There are four counties that have not yet submitted their totals.
4 The secretary of state knows what those totals are, and we know what those totals are.
5 And if you look at the four missing States and add up their votes, that leaves you with the
6 5.25. So it was a very simple explanation.

7 Q I am sorry. You said "States"; I believe, four missing counties.

8 A Yeah. I'm sorry. Four counties were not yet reported in the public-facing
9 State database.

10 Q I see.

11 A And so Scott said: Look, when you add in the four missing counties, it
12 totals up to the number that the secretary of state reported. That's it. That was a
13 completely logical, rational explanation and obviously addressed the concerns about
14 whether there was fraud on that point in Pennsylvania.

15 Q All right. So, Mr. Donoghue, just so sort of generally with this or with
16 others, when you do cycle through one of these allegations and determine that it's
17 meritless, do you convey that up the chain to Mr. Rosen or ultimately to the White
18 House? I mean, if the President of the United States had said, "Hey, this is outrageous,"
19 you look into it and find it's actually easily explained, what, if any, effort do you make to
20 kind of pass that conclusion along to the White House?

21 A I reported all these results to the Acting Attorney General. We did not
22 report them to the White House. We didn't, you know, say, "Okay, we have got to call
23 over there and tell the President we got to the bottom of it," or anything like that. They
24 may come up in subsequent conversations because the President then raises them.
25 We're able to say: No. We looked into it that, and there's nothing to it.

1 But we weren't reporting back to the White House simply because the President
2 mentioned some allegations.

3 Q I see. It wouldn't be consistent with protocol for you to go back to the
4 President every time something that comes up in a discussion is investigated or resolved?

5 A He didn't instruct us to do that, and we weren't going to do it. So.

6 Q Yeah. All right. I want to turn your attention, if you can now to
7 exhibit 10, which we get back into Mr. Clark. The next day, December 28th, you and Mr.
8 Rosen get an email from Mr. Clark, and he is asking for two urgent action items. Tell us
9 about this email, the two actions that he requested, and what your response was.

10 A Right. So DAG Rosen and I spoke, I think, probably several times on the
11 27th and certainly the 28th because that was a Monday. DAG Rosen and Jeff Clark had
12 a long personal and professional relationship. They had known each other for decades.
13 They had worked at the same law firm together. He knew Jeff Clark much better than I
14 did. And, you know, we discussed why Jeff Clark's name was coming up, why it was
15 coming from the President, why it was coming from this Congressman. And Jeff Rosen
16 said: Well, look, I am going to talk to Jeff Clark to find out what's going on here. We
17 got to get to the bottom of this.

18 So I think he had conversations with Jeff Clark earlier on the 28th. They
19 preceded this email, which came fairly late in the day. I did not talk to Jeff Clark before
20 this.

21 So, at 4:40, I received this email from Jeff Clark. I read it. I read the
22 attachment. I had to read it more than once to make sure I really understood what he
23 was proposing. And then I drafted a response. I don't know where Jeff Rosen was at
24 this point, but I went to his office, and he wasn't there. So I didn't get to discuss my
25 response with him before I sent it. But I sent it out. And then I saw him shortly

1 afterward, and he was very upset by Jeff Clark's request. And he said that he had
2 instructed one of his administrative support personnel to get Jeff Clark in his conference
3 room. He was -- he was a little angry. And he said: I want him down here. We
4 need to talk to this guy and find out what's going on.

5 So I think there's some emails that show up.

6 Q Yeah. And I don't want to jump ahead too much, Mr. Donoghue, because I
7 want to get to that conversation. But let's go back to Mr. Clark's email. The first thing
8 he asks of you is: I would like to have your authorization -- "you" meaning you and Mr.
9 Rosen -- to get a classified briefing tomorrow from ODNI led by DNI Ratcliffe on foreign
10 election interference issues. And he mentions activating the IEEPA and 2018 EO powers
11 about the Dominion machine access to the internet through a smart thermostat with a
12 net connection trail leading back to China. He is essentially asking if you can get a
13 briefing about this allegation of Chinese control of Dominion machines through a
14 thermostat. Did that strike you as odd, and what was your reaction to that specific
15 request?

16 A Yes, it struck me as odd. I won't go into details, but we received briefing
17 about what the IC, the intelligence community, knew about the election in advance.
18 This was inconsistent with what we had been told. And I had not heard anything about
19 smart thermostats and internet connections leading back to China and things like that.
20 So the whole thing struck me as very odd.

21 Q Yeah, and that Mr. Clark, the head -- acting head of the Civil Division is asking
22 for a classified briefing with the Director of National Intelligence about this allegation.
23 That also procedurally was odd?

24 A Yes.

25 Q Okay. He also then -- the second ask is this draft letter, which I believe is

1 attached to the email that he sends you and Mr. Rosen. And that letter is a draft letter
2 that you and Mr. Rosen and he, Mr. Clark, would sign to the Governor, the Speaker of the
3 House, and the president pro tempore of the Georgia legislature, essentially asking them
4 to stand down and not certify the results of their election. How did that request strike
5 you, and what did you do about it?

6 A It struck me as very strange and somewhat alarming. And, as I said, I had
7 to read it more than once to make sure I understood what he was proposing here. It
8 was completely inconsistent with the Department's role, generally. And it was
9 inconsistent with what our investigations, to date, had revealed. And so I think I made
10 my views known in the email response I sent to him.

11 Q Yeah, which we'll get to. To be clear, he asks that -- a version of this letter
12 be sent to each relevant State. So was his request to send this letter, drafted for
13 Georgia, not just to Georgia officials but to officials in other States where there had been
14 allegations of election fraud?

15 A Yes. That was my understanding of his proposal.

16 Q All right. He writes that he put it together quickly -- "it" being the
17 letter -- but other messages suggest that it may have been drafted by Ken Klukowski.
18 Do you know Ken Klukowski and what his role may have been within the Department's
19 Civil Division at that time?

20 A No. I don't.

21 Q Okay. Did you know whether or not Mr. Clark was talking to anyone else in
22 the Department about this letter or other election issues?

23 A No. I had no reason to think that.

24 Q All right. So you respond, Mr. Donoghue. We get to your response, which
25 is tab 11. You drafted a pretty comprehensive, specific response reflecting your

1 frustration on the 28th, just about a little over an hour later, at 5:50. I won't ask you to
2 read it to us, but just summarize for us your overall reaction and what's reflected in the
3 email.

4 A I tried to make it clear to him that this is not the Department's role. Again,
5 we don't do quality control for State elections. The States run the elections. We
6 investigate crimes, and we look at civil rights matters. So I tried to make it clear to him
7 that this is simply not our role, to recommend to the States what they do and, secondly,
8 that we have conducted investigations and that the factual claim he was making here was
9 simply not accurate. And so I reminded him that AG Barr had made public statements
10 on this point, less than a week prior, or, I guess, exactly a week prior was the last time he
11 had made some public statements, and that this was just completely unacceptable and
12 not anything that I would ever sign. And I know Jeff Clark -- or Jeff Rosen, rather, had
13 the same response.

14 Q You say in the first paragraph: There's no chance that I would sign this
15 letter or anything remotely like this. You sort of lead with the conclusion. You then, in
16 the first paragraph, challenge his factual assumptions. You said: The investigations
17 that I am aware of relate to suspicions of misconduct that are of such a small scale that it
18 would simply not impact the outcome of the election. AG Barr made that clear to the
19 public only last week, and I am not aware of intervening developments that would change
20 that conclusion.

21 So, setting aside whether it would be appropriate for the Department to tell a
22 State what to do, you're challenging -- is it fair to say you're challenging the factual basis
23 included in his letter to the State official?

24 A That's right. And he himself, Jeff Clark, would have no way of knowing
25 what investigations we had conducted or not because he was not involved in election

1 matters.

2 Q Right. You then, in the second paragraph, Mr. Donoghue, you say: I
3 cannot imagine a scenario in which the Department would recommend that a State
4 would assemble its legislature to determine whether already certified election results
5 should somehow be overridden by legislative action. This would be a grave step for the
6 Department to take and could have tremendous constitutional, political, and social
7 ramifications for the country.

8 Is that your sort of procedural response here that this is just not the Department's
9 role to be quality control for State elections and tell a State legislature what to do?

10 A Yes. That's the point I was making. Yes.

11 Q All right. So, when you and Mr. Rosen get this letter, you compose the
12 response. You indicated previously that Mr. Rosen essentially summons Mr. Clark up to
13 the 5th floor for a face-to-face meeting. Does that meeting then occur?

14 A Yes. He is on the 4th floor. But, yes, in the DAG conference on the 4th
15 floor.

16 Q Okay. So you are personally present, Mr. Donoghue, for that meeting
17 between Clark and Rosen?

18 A Yes. It was the three of us.

19 Q Tell us about the conversation there with Mr. Clark.

20 A Mr. Clark explained that he had been looking at some of these allegations on
21 his own, that he had information, that he had concerns about the reliability of the
22 outcome of the election. He mentioned this smart thermostat thing. It was clear that
23 he had been reading some affidavits that were attached to some of the civil filings in
24 some of the cases that were pending or already dismissed around the country. He had
25 various theories that seemed to be derived from the internet about why the outcome of

1 the election was in question. And he wanted, one, the briefing; and, two, he was very
2 insistent about sending this letter.

3 So the conversation was a very difficult and contentious conversation. He made
4 it clear at some point that he had been in the Oval Office and spoken to the President,
5 which surprised me, to say the least. I told him that he had violated the White House
6 contacts policy. His response to that was something to the effect of "It's a policy,
7 there's a lot more at stake here than a policy." And I reminded him that I was his boss at
8 that point and that he was not to do that again and that he was making these comments
9 and sending emails and drafting letters without the knowledge of what the Department
10 had actually done in terms of investigations, that he was being reckless. And I recall
11 toward the end saying: What you're proposing is nothing less than the United States
12 Justice Department meddling in the outcome of a Presidential election.

13 And his answer was: I think a lot of people have meddled in this election.

14 It got fairly contentious. As I said, Jeff Rosen and Jeff Clark have known each
15 other for a long time, and he was sort of -- Jeff Rosen was, of course, the boss for both of
16 us. So he was going to make these decisions. But he was also a little bit more of the
17 peacemaker in this conversation. I was angry, and he tried to find a way forward and
18 said: Well, look, Jeff, if you want a briefing, if you have the appropriate clearances to
19 get such a briefing, then you can get it. But you're going to see that the IC, the
20 intelligence community, will not support these allegations. And, with regard to the
21 letter, you know, there is no reason to send such a letter. It's not supported by the
22 investigations. It's not supported by the evidence.

23 He said: Rich knows what the investigations are. He knows this much better
24 than you do. You haven't had the benefit of that. So you have to understand that we,
25 Jeff Rosen and I, have a much better understanding of what's going on here, and we have

1 a much better understanding of why there's no way we can send a letter like this.

2 That's generally how the conversation went.

3 Q I see. So, you, it sounds, like, Mr. Donoghue, to paraphrase, are the one
4 very directly chastising, criticizing Mr. Clark, calling out the policy violation, and directing
5 him to stand down whereas Mr. Rosen is more of a trying to find a way forward or trying
6 to somehow placate Mr. Clark?

7 A Yes. I wouldn't say "placate" him because, as I said, DAG Rosen was our
8 boss, and he was in charge of the situation. He was making the right decisions. I was
9 more of the mind of just shutting Jeff Clark down. But he thought it was more
10 appropriate to explain to him why he was wrong and move forward that way.

11 Q Did you tell him to focus on his portfolio and only his portfolio?

12 A Yes. I said he was -- he was outside his lane. He had no responsibility for
13 this stuff. He had no knowledge of this stuff. He'd never conducted an election
14 investigation or any criminal investigation in his life. And he had no business sticking his
15 nose into these matters when he had the Civil Division and those responsibilities.

16 Q Did you ask him why Congressman Perry was mentioning his name or was
17 suggesting, saying things about him in your phone conversation?

18 A I recall saying at some point basically: Why the hell are we hearing your
19 name from the President of the United States and a Congressman? What is going on?

20 And I was focused much more on the President than the Congressman. And
21 that's when he relayed that he had been in contact with the President; he had been in the
22 Oval Office. He didn't explain how he got there or exactly when he was there.
23 Obviously, it was within the last few days, but I was focused much more on the President
24 than on Congressman Perry.

25 Q Did the subject in this conversation, Mr. Donoghue, of the President

1 contemplating a leadership change come up? Did Mr. Clark raise that, or did you or Mr.
2 Rosen?

3 A Mr. Clark did raise it in a somewhat removed fashion. And he said
4 something to the effect of "Well, you know, the President's thinking about leadership
5 here and whether we have the right leadership for these trying times," or something to
6 that effect. It's not an exact quote. But he made certainly an oblique reference to the
7 fact that there might be a leadership change and that he would be a part of that.

8 Q Yeah. All right. And then is that what prompted you to talk about the
9 White House contact policy or direct him to have no further contact with the President?

10 A I said that prior to that because, again, I asked: Why are we hearing your
11 name from the President?

12 And then he said: Well, because I talked to the President. I met with the
13 President in the Oval Office, and he is very concerned about these things, and I am very
14 concerned about these things, and I think the Department should be very concerned
15 about these things.

16 Q So how does the meeting end? Do you have a sense that he understands
17 the direction that you have provided or not and that you expect further problems?

18 A One of the takeaways from the meeting was that Acting AG Rosen had given
19 him permission to get the DNI brief, provided he had the appropriate security clearances,
20 which he said he did. So that, apparently, was going to happen. And then we were
21 going to sort of reconvene later to determine and what, if anything else, should be done
22 once Jeff Clark had the benefit of that briefing.

23 Q Okay. But fair to say it ends without a sort of a universal understanding,
24 hey, no apology, no "okay, I got it going forward," but continued to be contention?

25 A Yes. There was definitely still a contentious situation as the meeting

1 ended.

2 Q So, after the meeting, you felt the need to notify Steve Engel of the
3 conversation. Is that right?

4 A Correct.

5 Q Tab 12 is an email that you send at 11:41 that night, Mr. Donoghue, to Mr.
6 Engel where you say: Please come to my office so I can read you into some antics that
7 could potentially end up on your radar.

8 Tell me what you meant when you told Mr. Engel about antics and things that
9 could potentially end up in -- and, again, Mr. Engel is the head of the Office of Legal
10 Counsel, OLC, at the time. Why did you feel it necessary to loop him in?

11 A When AG Barr left and Acting AG Rosen took over, we changed the meeting
12 schedule a little bit. And we started having 9 a.m. meetings with different staff
13 members in DAG Rosen's conference room. Steve was one of the people who was
14 invited to the meeting every day. Other people rotated.

15 If you look at the chain of succession within the Department, it goes through a list
16 of people who become the Acting Attorney General in the absence of people above them
17 on the list. When you go through that list, you remove anyone who is in an acting
18 position.

19 So, for instance, the Solicitor General is fairly high on that list. But because the
20 Solicitor General had left, there was an Acting Solicitor General; you remove that person
21 from the list. And, when you go down that list, you see that if the President or -- well,
22 I'll say if the President fired Acting AG Rosen, the next person to move into the Acting AG
23 seat, absent some other action by the President, would be Steve Engel. Steve was the
24 Senate-confirmed Assistant Attorney General in charge of OLC.

25 And so I had a concern at this point that there could be an immediate leadership

1 change; and, if that happens, Steve would end up in the seat, and Steve would have no
2 idea what's going on. So I felt that, although DAG Rosen and I were keeping this close
3 hold, that Steve needed to know what was going on in case that developed.

4 Q Well, let me stop there and see, Ms. Cheney, if you have any questions
5 about this series of events.

6 Ms. Cheney. I don't. Thank you.

7 BY [REDACTED]:

8 Q You know, Greg, I would like to keep going a little bit longer, if that's okay.

9 Mr. Donoghue, are you good? I am getting closer to the end. But I -- maybe I
10 thought I might do another couple of meetings and stop before we get to the January 3rd
11 White House meeting, and maybe, at that point, we'll take a lunch break. But, if you are
12 comfortable, I would like to keep going for a little while longer before we stop.

13 A I'm fine. I would like to get through as much as this as we can.

14 Q I appreciate that. All right. Well, then, let's turn then to the White House
15 meeting that happens the next day, December the 29th. That's another meeting in
16 which you took notes. This is not a meeting with the President; this is a meeting with
17 the chief of staff. And, well, you tell us. Is there a meeting at the White House that
18 you attend on December the 29th?

19 A Yes. It was in the Chief of Staff's Office. That's the only time I have been
20 to the Chief of Staff's Office. I think it was in the afternoon. I don't remember,
21 specifically. But we went over there. DAG Rosen and I went over there, and Steve
22 Engel was also over there. I think Steve met us over at the White House. He didn't
23 travel with us. But we all sat in the Chief of Staff's Office. We had a number of things
24 to discuss, some of which related to the election, some of which did not, some of which
25 just related to normal administrative or, I should say, administration transition matters.

1 Q Got it.

2 A So I took these notes out in the open in front of the chief of staff -- he knew I
3 was taking notes. And they reflect --

4 Q -- reference Mark Martin and John Eastman. Tell me a little bit about
5 them, what the discussion was.

6 A There was a discussion at this point about what we were calling the original
7 jurisdiction case. And you see number four there on my list. It says: Original
8 J -- meaning jurisdiction -- case. We told the chief of staff the United States does not
9 have standing. His response was DOJ should talk to the Olsens. And, in parenthetical, I
10 have: attorneys who filed a similar case.

11 And then the arrow up to the top, which says Mark Martin and John Eastman,
12 they were attorneys of some sort that had, according to the chief of staff, some views or
13 insights about whether or not this original jurisdiction case could be brought at the
14 Supreme Court.

15 Q All right. And it says: P trusts them. Or is this another reference to the
16 President actually having some relationship with Mr. Martin and Mr. Eastman?

17 A Yes. President trusts their view.

18 Q I see. Okay. All right. And is Mr. Engel, is he there in part because
19 there's a discussion of whether the Department has standing to file a case in the Supreme
20 Court, and that would be a matter in which OLC would be expected to weigh in?

21 A Yes. I think that makes sense. I think Steve was over at the White House,
22 perhaps talking to or meeting with the White House counsel previously, and he sort of
23 just rolled into this meeting when we got over there.

24 Q All right. We'll come back to the possibility of a Supreme Court filing. But
25 there are two other issues discussed reflected in your notes on Pennsylvania election

1 issue and Arturo D'Elio. Tell us, if you can, first about the Pennsylvania issue reflected
2 there in your notes?

3 A So the Pennsylvania issue is the delta between the certified votes reported
4 and the public-facing State election database. I have already explained all of this.

5 Q Okay.

6 A Apparently, at this point, December 29th, we didn't have the final answer
7 from Scott Brady as to why that difference existed. So this is the chief of staff saying:
8 You guys know about this. Right?

9 And we said, essentially: Yes, you know, we heard about it.

10 And I wrote here: Advised that we are looking at the claim that certifications
11 exceeded number of votes cast. So, obviously, at that point, Scott had not given us the
12 explanation.

13 Q Got it. All right. And then the last reference to the Italian matter?

14 A So this is the first we heard of this. He gave me the name Arturo D'Elio,
15 D-'E-l-i-o. I later realized that was a misspelling, and it should be D'Elia, D-'E-l-i-a.
16 This was an allegation, and it was convoluted from the start, and the chief of staff was
17 clear that he didn't understand this allegation fully, but he wanted to pass it along for
18 whatever we thought it was worth. And the allegation had something to do with an
19 Italian company called Leonardo and a facility they had in Italy, the Pesara, P-e-s-a-r-a,
20 facility, and that this gentleman Mr. D'Elia was somehow under the protection of some
21 Italian Government agency, that a letter had been sent about his company. And there
22 was some claim made that the company was somehow involved in changing votes in the
23 2020 U.S. election. The claim also in the letter was that this had been coordinated at
24 least with the knowledge of CIA officers stationed in the Embassy in Rome -- I know
25 where the Embassy is in Rome -- and that there was an American subsidiary of Leonardo

1 called U.S. Aerospace Partners that might have some information about this.

2 So this was a very colluded -- I am sorry, convoluted explanation of some
3 allegation which we were hearing for the first time. And the chief of staff said he
4 wanted to make sure we were aware of it.

5 Q But, when the chief of staff conveyed this to you, Mr. Donoghue, was it your
6 impression that he believed this, or he was saying, "Hey, I just want you to be aware of
7 this for whatever its worth," much like when you were passing something along to the
8 U.S. attorney in Michigan? Give us your sense as to how the chief of staff actually
9 credited or didn't this potential allegation?

10 A My sense was that these things were getting dumped on the chief of staff's
11 desk, and he wanted to move them off his desk, and he wanted to be able to say: I
12 referred that to the Department.

13 He wasn't vouching for any of this. He was just passing along whatever this
14 information was. It wasn't clear to me what the source of the information was or
15 anything else.

16 Q Okay. And then tell us what happened with respect to the Italian
17 allegation. Was it looked at? I mean, tab 14 is the actual -- it looks like the actual
18 letters in Italian and in English in which these allegations are documented. Is that
19 correct?

20 A Right.

21 Q Fourteen. So tell us what you did with this information about the Italian?

22 A So the Acting Attorney General said, you know: We'll look at it. We'll
23 determine whether there's anything to be done about this. Obviously, it sounded very
24 farfetched to begin with. We didn't promise we would do any sort of investigation.
25 We just said we would take the information and deal with it.

1 I don't know if it was in the room itself or perhaps on the ride back, but Acting AG
2 Rosen told me: Just run this guy's name and see if he shows up anywhere. Let's find
3 out if we know anything about this guy. Because his name is not even on those letters,
4 you'll notice. The signature block for the letters is a totally different name.

5 Q Right.

6 A So this whole thing was very confusing. But you'll see in the left there, I
7 have: J. Demers, D-e-m-e-r-s, working on this, 12/29/20. So what we did was, when
8 we got back to the Department, I called John Demers, who was the AAG for the National
9 Security Division, and I said: John, can you just run this name and see if there's anything
10 that we know about such an individual?

11 I think I asked the FBI to do the same. On my own, I googled the name and
12 Leonardo, and I learned that, first, the name was misspelled. It should be D-'E-l-i-a, but
13 that there was some Italian press releases relating to the arrest of Mr. D'Elia in Italy, I
14 believe, in December for a criminal conduct that related to a scheme under which he
15 purportedly exfiltrated data from his company, Leonardo. And this was criminal
16 conduct that, according to the public reporting, had gone on between 2015 to 2017. So
17 it appeared to me that this individual was actually in custody in Italy facing criminal
18 charges.

19 Q Which further cast doubt on his credibility with respect to these voting
20 machines and interference in the election?

21 A Yes, it appeared that this was someone who was in a difficult situation in
22 Italy, and perhaps he or someone working on his behalf were trying to help him out of
23 that situation.

24 Q Yeah. Any further effort to investigate it, or did it stop at that point when
25 you found out that information about the purported source?

1 A It stopped at that point. I think the FBI got back to me with either no
2 information or similar information saying this guy has got a bunch of issues, and he is not
3 a reliable source of information. I don't remember exactly, but I was ahead of them just
4 by googling the guy.

5 Q Okay. All right. The other followup from the December 29th meeting
6 involves the Supreme Court case. I want to go back to that. After the meeting in Mr.
7 Meadows' office, do you get an email from the President's assistant, Molly Michael, with
8 a draft complaint? Typically -- we're at tab 15 --

9 A I don't know if it was before or after, frankly. I see her email as 11:17 on
10 the 29th. That might have come after; it might have come before this meeting. I don't
11 remember exactly when the meeting was in the Chief of Staff's Office on the 29th, but it's
12 the same day.

13 Q Okay. And is it right, Mr. Donoghue, that she forwards you, whether it was
14 before or after the meeting in Meadows' office, a draft complaint, the United States of
15 America versus several States, the complaint that was the subject of the original
16 jurisdiction discussion that you just referenced?

17 A Yes. That's right.

18 Q So tell us, first of all, substantively, in your view, was -- did Department of
19 Justice have standing to bring -- would the Department have had standing to bring this
20 case in the Supreme Court?

21 A Initially, when this was brought up, I did not know. I suspected not, but I
22 didn't know. And so we asked both OLC, the Office of Legal Counsel, and OSG, the
23 Office of Solicitor General to look at the standing issue. There were a lot of other issues,
24 obviously, too, but your initial question is, would we even have standing?

25 Q Right.

1 A And they both concluded no, and they reported back as to why the
2 government did not have standing to bring such a case in their view.

3 Q All right. It looks like Mr. Engel actually sends you, at tab 19 -- if you could
4 just flip ahead to that -- an actual summary of -- it's called "Evaluation of Potential
5 Original-Jurisdiction Suit in the Supreme Court." Does that summarize OLC's view that
6 there is no standing to bring this case into the Supreme Court?

7 A Yes. That was Steve's response that he gave us shortly after we asked him
8 to look at it.

9 Q This specifically concludes: Mr. Donoghue, there's no legal basis to this
10 bring this lawsuit. We cannot ethically file a suit without a legal basis. And we are
11 certain that, if we did so, the Justices would promptly dismiss it. Anyone who thinks
12 otherwise simply does not know the law, much less the Supreme Court. If there were a
13 legal mechanism available, we would pursue it, but there is not. And this case is
14 definitely not it.

15 Fairly strong words from OLC that there is just no ambiguity about the standing
16 issue here. Is that fair to say? That summarizes Mr. Engel and the Department's
17 position?

18 A Yes. That's fair to say that that was his position. We, basically, adopted
19 it. Steve's an excellent lawyer, and I trusted that his analysis was correct.

20 Q And he says a little bit further down: The United States as a government
21 does not have any standing to challenge the States, whether the States complied with
22 their State electoral procedures, essentially, the Federal Government can't reach into the
23 State and evaluate whether the State, in fact, complied with their own State law.

24 A Right. And this gets back to the issue that we do not conduct quality
25 control for State elections.

1 Q Right. You mentioned that this also was sent to the Solicitor General.

2 Was the view of the Solicitor General consistent with the OLC view?

3 A Yes. They were very similar.

4 Q All right. Now, despite that, did you have some -- one conversation with
5 one of the lawyers who purported to be calling on behalf of the President about the
6 Department's position on this litigation?

7 A Yes. The DAG and I had a conversation with him on December 30th.

8 Q Tell us about that. I think your notes of that conversation are at tab 16.

9 A Right. So just a clarification here. The date is connect. The name I have
10 at the top is not. It says: DAG call with Ken Kohl. Ken Kohl was the first assistant in
11 the D.C. U.S. Attorney's Office. We were dealing with Ken on preparation for
12 January 6th, which was going on at the same time. And we were literally doing one call
13 about January 6th and another call about these election matters. We were bouncing
14 back and forth. And so I wrote down "Ken Kohl" I think because I just hung up the
15 phone from Ken Kohl. But that's incorrect, and this conversation was with Kurt Olsen,
16 one of the attorneys that the chief of staff had referenced when we were in his office on
17 the 29th.

18 Q I see. So this is a conversation with Kurt Olsen, not Ken Kohl?

19 A Correct.

20 Q Okay. Tell us about the conversation.

21 A Mr. Olsen had been trying to get in contact with the Deputy Attorney
22 General, the Acting AG for a day or two. He was making calls and sending emails to his
23 chief of staff, John Moran, repeatedly, trying to get a meeting. The Acting Attorney
24 General said: I'm not meeting with this guy.

25 Ultimately, he decided to take a phone call from him. And so that call happened

1 on the evening of the 30th. And my notes reflect what happened there. It was on
2 speakerphone in the Deputy Attorney General's Office. I was sitting there for the entire
3 conversation. Essentially, the gist of it is that Mr. Olsen wanted to know whether or not
4 the Department was going to file this complaint against the States. And the DAG said
5 flat out: I'm not going to discuss that with you. We have your draft. We're looking
6 at it. We have questions about this theory. For example, whether the United States
7 would ever have standing to bring such a claim. And we're having our experts in OSG
8 and the Civil Division looking at it. But I'm not going to discuss that with you. You're
9 private counsel, and it's not appropriate for the Justice Department to be discussing what
10 it may or may not do with outside counsel.

11 Q Is there a discussion then about who Mr. Olsen represents?

12 A Yes. He said: I'm acting at the direction of the President -- which I wrote
13 it down as a quote. His role wasn't entirely clear to us so that the Deputy AG asked him:
14 Is he your client?

15 And he gave a curious response. He said: I have made my representation to
16 you on that.

17 I don't know if that meant he was his client or not, but he said he would be
18 reporting back to the President on the conversation. And the DAG said: You can
19 report to whoever you want. We're not going to discuss this with you.

20 And then Mr. Olsen ended it by saying: This is a historic moment. The election
21 has been stolen. We need to act to save the Republic.

22 And the Deputy AG said, "Look, we understand your perspective; we'll make our
23 own decision on this; it's not appropriate for us to discuss this with you," and hung up the
24 phone.

25 Q All right. So a similar question here, Mr. Donoghue, to what I asked you

1 before about the President making requests. You're getting a call here from a lawyer
2 who says: I am acting at the direction of the President.

3 Did that create in you or Mr. Rosen any pressure or any feeling that this was
4 coming from your boss at the White House, that you should take some official action as a
5 result of that desire to file this litigation?

6 A Frankly, from my perspective, it didn't change much. We had explained,
7 and we will explain again to the President, that this is just not the Department's role.
8 Clearly, other people thought otherwise. And I understood, at least from the President's
9 perspective as a nonlawyer, why you would believe that the United States Justice
10 Department must have standing to bring a case that challenges the way a State
11 conducted its election. That made perfect sense to me from a layman's point of view.
12 But lawyers, particularly lawyers who drafted complaints and have purportedly done the
13 research on this stuff, should understand otherwise.

14 Q Yeah. The other subject of that discussion in the Chief of Staff's Office was
15 the Pennsylvania allegations. Did you ever have any contact with the State senator,
16 Mastriano, who is reflected in your notes? Did he ever call you, or did you have any
17 conversation about something that happened in the Pennsylvania election?

18 A I don't recall as I sit here if he called me. I do distinctly remember the
19 conversation with Congressman Perry. I believe Mastriano sent me either some emails
20 or some letters or something to that effect. I remember getting something from him
21 along similar lines, but it was all sort of balled up with what Congressman Perry was
22 talking about. And I don't recollect speaking to Mastriano, but I may have.

23 Q And the allegation there was about more votes counted than registered
24 voters, which you were able to, with Mr. Brady as U.S. attorney, essentially, rebut. Is
25 that right?

1 A Yes, but it went beyond. They had some claims in Pennsylvania about how,
2 essentially, the procedures of the election were changed by State officials and not
3 changed by the State legislature. And their claim was that the Constitution required
4 that the State elections be conducted in accordance with the rules set by the State
5 legislature. That's fine. There may or may not have been merit to that claim, but it
6 wasn't the Department's issue. We had no role in that. And we explained that
7 repeatedly to people, including the President, said that's something for the campaign to
8 pursue in civil actions on their own. The United States Justice Department doesn't come
9 in and file suits because the States are not complying with their own election laws, if that
10 was even the case.

11 Q Yeah. All right. I just have another couple of things along the lines of his
12 chief of staff sending you things. Is it fair to say, Mr. Donoghue, that after that meeting
13 in person in his office, you got a few additional things sent by email from Mr. Meadows
14 with allegations that he wanted you and others at the Department to be aware of?

15 A Yes, they primarily went to the Acting Attorney General, and then he would
16 forward some of them to me, but you can see a series of emails.

17 Q Yeah. Let's turn first to exhibit 20, which is an email that comes to Mr.
18 Rosen, as you said, from Mr. Meadows, that is forwarding something from Cleta Mitchell.
19 Do you know who Cleta Mitchell is?

20 A I don't know who that is, but I know that name was associated with the
21 President's legal team and that she was involved in filing some of these cases around the
22 country at this time.

23 Q All right. And Mr. Meadows asked Mr. Rosen: Can you have your team
24 look into the allegations of wrongdoing, only the alleged fraudulent activity?

25 Do you remember seeing that and getting that request from Mr. Meadows that

1 you somehow look into what is attached to that message?

2 A Yes. I don't specifically remember as I sit here whether the DAG referred
3 that or forwarded that email to me or not, but I do remember seeing this.

4 Q Okay. And just tell us, as you have with the others, Mr. Donoghue, what, if
5 any, action did you or others in the Department take upon receipt of this -- looks like it's a
6 draft complaint or, actually, an actual complaint from a case in Georgia involving similar
7 allegations about election fraud in that State?

8 A I think I looked through the complaint. I probably didn't read it word for
9 word, but I think I looked through it to get an idea of whether this was anything that the
10 Department would have any role in. So, again, if they're complaining about the State
11 not complying with its own election laws, that's not an issue for the Department. If
12 they're making allegations of criminal misconduct, that might be an issue for the
13 Department. And so I went through the complaint. I don't remember exactly what's in
14 here, but I don't know if I referred it to the U.S. attorney in Atlanta or not. But I had
15 been talking to the U.S. attorney in Atlanta throughout this time period about different
16 allegations relating to purported election fraud in Georgia. So I don't know if I
17 forwarded this to him or just discussed it with him or what the case might be.

18 Q Okay.

19 Mr. Meadows then sends another message. This is now exhibit 21, and it's just
20 simply a YouTube link. This one involves a Rome satellite issue. Do you remember the
21 discussions about Brad Johnson, Rome, satellites, servers, and the YouTube link between
22 you and Mr. Rosen?

23 A Yes. I do. This was on January 1st. It was a holiday. I was in my
24 apartment in Washington. There were a series of calls and emails throughout that day.
25 AG -- Acting AG Rosen was keeping me updated on context. He was getting, and he

1 forwarded an email chain to me, not this one but a similar one, that had that YouTube
2 link in it.

3 Q On exhibit 22, Mr. Donoghue, we actually get your response when Mr. Rosen
4 forwards it to you. You say simply: Pure insanity.

5 What did you mean by that?

1

2 [1:04 p.m.]

3 Mr. Donoghue. That was commentary on the YouTube video itself. I wasn't
4 making a remark about the chief of staff or the fact that he forwarded this or anything
5 like that. I had no idea if the chief of staff even looked at this video.

6 But I did watch the video. It was about a 20-minute YouTube video by this
7 individual who identified himself as Brad Johnson. And it had this very conclusory
8 explanation of how multiple intelligence agencies -- U.S., British, and others -- conspired
9 to use Italian military satellites to change vote tabulations in the U.S. Presidential
10 election.

11 And it just seemed to me to be completely off the wall. It was not evidence. It
12 was an internet conspiracy theory that was presented in a very conclusory manner, saying
13 this, in fact, is what happened, without citing to any evidence that supported it.

14 BY [REDACTED]:

15 Q I see. So it didn't even give rise to anything credible that could be pursued
16 with a factual investigation, in your view?

17 A No, not in my view.

18 Q And did the source of it impact that?

19 There's a discussion on that same email chain, exhibit 22, between you and
20 Mr. Rosen about Brad Johnson and his relationship with Mr. Giuliani.

21 Tell us a little bit more about the fact that Mr. Johnson was involved and his
22 relationship with Giuliani bore upon your evaluation of the credibility of the YouTube
23 video.

24 A I don't think it bore upon it because I clearly watched the YouTube video and
25 had my response before I got that information about Mr. Johnson being associated with

1 Mr. Giuliani.

2 Q I see.

3 A So you'll see that the DAG's response is several hours later.

4 So he forwarded this to me. As I said, there were emails flying throughout the
5 day, phone calls going throughout the day. I sat down, I watched the video. I was -- as
6 an investigator, I was not impressed. And I made my response at 3:39, according to this
7 email chain.

8 And then, much later, Jeff Rosen told me that there was more to this and that this
9 guy was associated with Giuliani and so on.

10 Q Did Mr. Rosen make a decision that he wasn't going to meet with Giuliani or
11 anyone associated with him at this point? Did he tell you that?

12 A He did. He certainly told me in the email, and he might have told me in the
13 phone calls as well. He was getting a little irritated that day, I think understandably so.
14 And he relayed to me, at least in the email, if not also on the calls, that he was not going
15 to meet with Rudy Giuliani.

16 Rudy Giuliani certainly knew how to bring allegations of criminal conduct to the
17 attention of a U.S. attorney's office or the FBI, and he could follow the regular channels if
18 he chose to do that.

19 Q Got it.

20 All right. Mr. Meadows emails you and Mr. -- or, actually, Mr. Rosen a little bit
21 later, still on Friday, the holiday, January 1st, at tab 23, about signature match anomalies
22 in Fulton County, Georgia. And he asks, "Can you get Jeff Clark to engage on this issue
23 immediately to determine if there is any truth to this allegation?"

24 Do you remember having that forwarded to you and what your response was?

25 A Yes. My response is the next tab, 24. I say, "At least it's better than the

1 last one, but that doesn't say much."

2 So when I'm -- I'm melding a couple of different things together here. I took Jeff
3 Rosen's comment, "Can you believe this? I'm not going to respond to the message
4 below," to be a commentary on the fact that someone in the White House believed Jeff
5 Clark should be involved in these things.

6 The issue about signature matching, that might be a legitimate issue. It might
7 give rise to some concern about whether there was criminal conduct in an election. So,
8 when I say "at least it's better than the last one," at least this isn't some fanciful notion of
9 Italian satellites changing votes in the Midwest. Signature verifications are something
10 that routinely happen after elections, and that's what I'm saying when I say "at least it's
11 better than the last one."

12 Q Yeah.

13 A So I'm mixing and matching a little bit off of his comment. His comment I
14 took to be a reference to the Jeff Clark issue, and mine is more of a comparison of
15 signature matches to Italian satellites.

16 Q I see.

17 And, at that point, Mr. Donoghue, had the Department already evaluated
18 signature matches and any anomalies in Fulton County and resolved that as not sufficient
19 to cause concern?

20 A I think we left that to the civil litigants. And I don't think there was
21 anything that raised a sufficient question about signature matching in Fulton County to
22 warrant any sort of criminal review by the Department.

23 I could be wrong about that. The U.S. attorney in the Northern District of
24 Georgia would have a better idea. But I don't recall the FBI or anyone else looking at
25 signature matching in Georgia.

1 Q Yeah. Because there was no evidence of any potential criminal conduct.

2 A I think that's right. I think they wanted to do a signature match review in
3 the hopes of finding some criminal conduct, but we don't go out and just start fishing
4 expeditions in the hope of finding criminal conduct. We need something to base it on,
5 and I don't think that was ever presented to us.

6 Q Last question on this line is the next tab, 25, another email from
7 Mr. Meadows -- busy afternoon for him -- Friday, January 1st, now it's almost 7
8 o'clock -- with some attachment involving ballot security in New Mexico.

9 Mr. Meadows asks, "Can you forward this list to your team to review the
10 allegations? ... Steve Pearce is the chairman of the Republican Party." And then there's
11 a short, two-page document that is titled "New Mexico List of Complaints."

12 What, if anything, do you remember about issues in New Mexico and whether the
13 Department took any action upon receipt of this message from Mr. Meadows?

14 A I don't recall anything about New Mexico. I've seen this email in some of
15 my prior interviews with the Senate, but I don't ever recall New Mexico being on our
16 radar screen. I don't think I talked to the U.S. attorney there, who I knew. I don't think
17 DAG Rosen ever forwarded this to me.

18 Q Okay.

19 [REDACTED]: All right. Let me stop there and see if there are any questions.
20 I'm not sure -- I think Representative Cheney is on. I saw Mr. Raskin briefly.

21 Ms. Cheney, let's start with you, if you have any followup questions.

22 Ms. Cheney. I don't. Thanks, [REDACTED]

23 [REDACTED]: All right.

24 And, Mr. Raskin, I don't know if you're still on, but -- there you are. Do you have
25 anything that you'd like to follow up on?

1 Mr. Raskin. I have no further questions. Thanks.

2 [REDACTED] Okay.

3 BY [REDACTED]:

4 Q My only other question, Mr. Donoghue, is just, again, for your assessment of
5 Meadows, whether he took seriously any of these claims or whether you continued to
6 believe it was "get them off my desk," forward them, without necessarily vouching for
7 their credibility.

8 I'm just trying to get your sense as to whether Meadows was, sort of, believing
9 that these were valid and that the election was riddled with fraud or whether he was just
10 checking the box by passing this stuff along to you. What was your impression?

11 A Well, of course, to some extent I'm speculating here, but I think it was the
12 latter. I think he didn't have a firm opinion one way or the other about these matters.
13 They were landing on his desk, and he was sending them off.

14 Q Okay.

15 [REDACTED] I think what I'd like to do now, Greg, is maybe take a break. I'm
16 close to being finished. I'm literally up to the last two White House meetings, the brief
17 one on the 31st and then the January 3rd meeting. And then I'll be finished and I'll turn
18 it over to [REDACTED]

19 But it might make sense now to take a short break and let Mr. Donoghue, you
20 know, have a little bit of lunch before we continue. It's 1:14. Maybe at 2 o'clock we
21 could start up again. Is that okay?

22 Mr. Andres. Look, whatever you like. We don't need that much time and --

23 [REDACTED] We can go faster, if that would be your preference.

24 Mr. Andres. Yeah. Again, the shortest period of time that's reasonable for
25 people so that the people on your side don't kill you for stealing their lunch and the

1 people on my side don't kill me. But 15 or 20 minutes is more than enough. But it's up
2 to you. I --

3 [REDACTED] No, I want to be as accommodating to Mr. Donoghue as we can, so
4 why don't we say 30 minutes? That'll be enough for us to grab something quickly. It's
5 1:15. We'll resume at 1:45.

6 Mr. Donoghue, I really -- I know this is long, and I know you've told the story
7 before. We're going to march through it as quickly as we can and finish, you know,
8 before our appointed time.

9 Mr. Donoghue. That's fine. I appreciate it. Thank you.

10 [REDACTED] All right. We'll see you in 30 minutes. Thank you.

11 Mr. Andres. Okay. Yep.

12 [Recess.]

1

2 [1:48 p.m.]

3 [REDACTED] Well, let's go back on the record then.

4 I'll note that we are now joined [REDACTED] who is the chief counsel and
5 deputy staff director from the select committee, is here.6 I see Ms. Cheney is back, from the select committee, as well. And I believe she's
7 the only member who's currently here. And I'll let you know if other members do join
8 as we proceed.

9

BY [REDACTED]

10 Q So, Mr. Donoghue, I just have a couple more areas to cover with you before I
11 turn it over to [REDACTED] to talk about the January 6th events. I want to talk about two
12 more White House meetings, one that occurred on December the 31st.13 And I know we're stepping back a bit from all those emails that you received from
14 Mr. Meadows, but there are a series of photographs that are in your binder at tab 26. If
15 you could just take a look at those.16 And they seem to show you and some others in an Oval Office meeting that I
17 believe happened on December 31st. Do you recall that meeting?

18 A I do. And I have the photos.

19 Q All right. Can you just tell us in the photos who is who, just sort of going
20 around from the left, all the way around the table, around the President?21 A So, to the far left, facing the President, is White House Deputy Counsel Pat
22 Philbin, P-h-i-l-b-i-n. To Pat's right is me. To my right is the Acting Attorney General,
23 Jeff Rosen. To his right is the White House chief of staff, Mark Meadows. And at the
24 far end of the half-circle there is White House Counsel Pat Cipollone. And, of course,
25 behind the desk is the President.

1 Q Do you remember how it is that this meeting came together? What was
2 the subject matter? What did you expect in advance?

3 A This was relatively short notice. I think the President was in Florida for
4 Christmas, and we had expected him to stay there through the New Year, but he came
5 back on the 31st. And I think shortly after Air Force One landed, the Acting Attorney
6 General was advised that we were required -- requested to go to the White House. So
7 he and I headed over to the White House sometime mid-afternoon.

8 Q Did you have any idea, Mr. Donoghue, on your way what the subject matter
9 was? Or, if you didn't know for sure, did you have a suspicion as to what it was he
10 wanted to talk about?

11 A I expected he wanted to talk about election matters. I don't know if we
12 were specifically told that or not.

13 Q Okay.

14 So tell us about the meeting. First of all, start with the President's state of mind
15 or mood. What was it like during the meeting?

16 A The President was a little more agitated than he had been in the meeting on
17 the 15th. He discussed a variety of election matters. And, again, this was sort of in
18 keeping with what we had discussed previously, where he would say, are you guys aware
19 of this allegation or that allegation, and we would essentially say, yes, we're aware of
20 that, thank you.

21 But he certainly was adamant that the election had been stolen, that he won, that
22 the American people were being harmed by fraud, and that he believed the Justice
23 Department should be doing something about it.

24 Q You did not take notes during this meeting. Is there a reason for that?

25 A I did not take notes, no -- I never took notes in the Oval Office -- in part

1 because there was nothing new here. There was nothing that he was bringing up that
2 we hadn't previously been aware of. If we had, you know, perhaps I would've taken out
3 a pen and paper, but that was just not the situation.

4 Q Did the President or anyone else in the White House ever tell you that you
5 should not take notes when you were in meetings with him or in the Oval Office?

6 A No, there were no instructions along those lines.

7 Q All right.

8 Did the President, during this meeting, talk again about Jeff Clark or the possibility
9 of a leadership change at the Department?

10 A He did at the end. He reiterated that people were advising him to remove
11 both DAG Rosen and me. And we just repeated what we had said previously, that if
12 you're uncomfortable with your leadership, you should have the leaders that you want,
13 but it's really not going to change anything.

14 Q All right.

15 Was there any discussion of the Supreme Court complaint and the OLC opinion
16 about standing? Do you know whether that specifically came up?

17 A Yes, that definitely came up.

18 Q All right. And tell us again, quickly, what the discussion was with respect to
19 the President and his understanding of the standing issue.

20 A So the President brought up again that some of these cases -- in his view,
21 virtually all the cases -- were being dismissed on standing grounds and that if the
22 Department brought a case it would not be dismissed on standing grounds, because the
23 Department represents the American people, and the American people had standing
24 because they were being harmed by corrupt or defective elections.

25 And so we tried to explain to him that, in fact, the Department does not have

1 standing. We had asked OLC and the Office of the Solicitor General to take a look at
2 that. They had done the analysis and that, in their view, we did not have standing.
3 Because we really don't represent the American people directly; we represent the Federal
4 Government. And the Federal Government does not have standing to challenge the way
5 a State conducts its own elections.

6 He could not understand that. He was very animated, saying, you know -- I recall
7 him saying over and over, "How is that possible? How can that possibly be?" And,
8 again, from a layman's point of view, I understand his perspective, but we tried to explain
9 it to him, that as a legal matter we couldn't bring it.

10 Q Was there discussion during this meeting, Mr. Donoghue, about the
11 possibility of his appointment of a special counsel to investigate allegations of election
12 fraud?

13 A He did mention appointment of a special counsel in at least one of the
14 meetings. I'm pretty sure it was this one. It might've been both. It might've been
15 mentioned in passing on the 15th, but I don't specifically remember that.

16 He did say, "This sounds like the kind of thing that would warrant appointment of
17 a special counsel." He didn't say, "I'm directing you to appoint a special counsel." He
18 did not say, "If you don't, I will," or anything like that. But he certainly was making the
19 suggestion that it was clearly something he was interested in having us do.

20 Q Uh-huh. Did he mention any potential people inside or outside the
21 administration who could serve that role?

22 A I do recall at one point he said, "I think Ken Cuccinelli would make an
23 excellent special counsel." And Ken Cuccinelli was not there when that comment was
24 made, and that's why I think that comment was made on the 31st, because Ken was not
25 at that meeting.

1 Q Okay.

2 And, Mr. Donoghue, what was your and Mr. Rosen's response to the whole notion
3 of a special counsel, the appointment of a special counsel? When he said, this seems
4 like the kind of thing that would merit that, what was your response?

5 A On that, we didn't say a lot, but I think it was essentially left to, well, if we
6 don't see evidence supporting these individual allegations, then there's no evidence that
7 would warrant appointing a special counsel.

8 Q Yeah.

9 All right. Anything else about that meeting that sticks out in your mind now as
10 noteworthy?

11 A We definitely talked about Antrim County again. That was sort of done at
12 that point, because the hand recount had been done and all of that. But we cited back
13 to that to say, you know, this is an example of what people are telling you and what's
14 being filed in some of these court filings that are just not supported by evidence. And
15 this is the problem; the problem is, people keep telling you these things and they turn out
16 not to be true. So I remember we talked about Antrim County again.

17 There was a point at which the President said something about, "Why don't you
18 guys seize machines?" And I don't remember if this was in relation to a specific
19 jurisdiction or not, but, you know, "You guys should seize machines because there will be
20 evidence there," something to that effect.

21 And Acting AG Rosen said, no, we don't seize machines. We can't just go in and
22 take machines from State authorities. It doesn't work that way. You know, you seize
23 evidence pursuant to search warrants, and we're nowhere in a position to seek a search
24 warrant, so we can't just go in and seize machines.

25 And the President asked something to the effect of, doesn't the Federal

1 Government have some oversight responsibility, or something like that. And DAG Rosen
2 said, no, we don't. The States conduct the elections. And to the extent that the
3 Federal Government is involved, it's DHS providing assistance to the States, support for
4 things like software selection and quality control and things like that.

5 And, at that point, he got Ken Cuccinelli on the phone -- the President had one of
6 his support staff get Ken Cuccinelli on the phone. And the President said something to
7 the effect of, "Ken, the Acting Attorney General is telling me it's your job to seize
8 machines," which is not what the Acting Attorney General had said.

9 And then Ken responded and said, no, Mr. President, that's not the way it works.
10 We provide support, et cetera.

11 Q Uh-huh.

12 A And then he hung up the phone, and that was it.

13 Q Yeah.

14 You mentioned, Mr. Donoghue, that the President was more animated, continued
15 to talk about the election being stolen. Did anyone else in the meeting express similar
16 perspectives or seem similarly exercised about the allegations of voter fraud? Or was it
17 just the President, himself, that was expressing that frustration?

18 A That was just the President. I mean, the rest of us were there to hear him
19 out and respond. And we did. And we told him that there were issues here. You
20 know, if rules were changed along the way and things like that, maybe there's something
21 to that, Mr. President, but that's got nothing to do with the Department. Your lawyers,
22 through civil lawsuits, can pursue those matters, and we just have nothing to do with
23 that. So --

24 Q Uh-huh. And did Mr. Meadows or Mr. Cipollone or Mr. Philbin say anything
25 at all inconsistent with that, with what you and Mr. Rosen were telling the President in

1 terms of the limited ability to develop these facts? You know, give me a sense of their
2 participation or their message to the President during the meeting.

3 A I would say they were generally supportive. Pat Cipollone certainly
4 understood the situation and was trying to reinforce our arguments.

5 The chief of staff is not a lawyer, so -- and he was very quick throughout this
6 process to say, "Look, I'm not a lawyer, I don't know how this stuff works, you guys will
7 figure this out," you know, whether that was in his office on the 29th or this day. So he
8 recognized that he had, sort of, limited input on that issue. But Pat Cipollone was
9 supportive.

10 Q Got it.

11 All right. Let me turn your attention now to a second meeting that you have
12 with Mr. Clark -- that you and Mr. Rosen have with Mr. Clark.

13 Is there another contentious discussion face-to-face, Mr. Donoghue, between you,
14 Jeff Rosen, and Jeff Clark at the SCIF on the sixth floor at the Department of Justice on
15 January the 2nd?

16 A Yes. That was in the afternoon.

17 Q All right. Tell us, what was the impetus for calling -- who called it, and what
18 was the reason for that meeting?

19 A So the first meeting was on the 28th. That was Monday. This is the
20 following Saturday. I had intended to be at the office that afternoon because we had a
21 1 o'clock call with DOD and other partners relating to preparation for January 6th.

22 I didn't know if the DAG was going to do that call from his office or from home. I
23 got in to the Justice Department probably around 12:30, quarter to 1:00, shortly before
24 the call, and I went to the DAG's office. I saw he was there.

25 He said that he had spoken to Jeff Clark and that Jeff Clark told him, apparently

1 earlier that day, that he had decided -- that the President had offered him the Acting
2 Attorney General position and that he had decided to take it but that he wanted to have
3 one last conversation with Jeff Rosen before he communicated that to the President.

4 So we had a brief conversation about that. Then we had to break off and go into
5 the 1 o'clock call about January 6th. That took some period of time.

6 When that call was done, we were still sitting in his office, and I said, so what are
7 you going to do in terms of meeting with Jeff Clark? And he said, I am going to meet
8 with him -- hang on. I just want to make sure I'm not conflating two different days here.

9 Q Yeah. Take your time.

10 A Let me just think about this a second.

11 Q Uh-huh.

12 Mr. Andres. Was there a prior meeting with Jeff Clark before that?

13 Mr. Donoghue. Well, there was the 28th. I just want to make sure I had
14 the -- yeah, no, this is right. This was the 2nd. Because the only time I saw Jeff Clark
15 on the 3rd was in the Oval Office.

16 So let me back it up a little bit, because I am conflating slightly here January 2nd
17 and January 3rd.

18 So, when I got to the office, the DAG did tell me that he'd spoken to Jeff Clark and
19 Jeff Clark relayed that the President offered him the position of Acting Attorney
20 General -- it was very explicit at that point --

21 [REDACTED] Yeah.

22 Mr. Donoghue. -- and that Jeff Clark was thinking about it and he wanted to
23 meet with DAG Rosen about it.

24 So, after our call with DOD and the other partners, he said he was going to have a
25 meeting with Jeff Clark up on the sixth floor, which is our SCIF, and that he wanted me to

1 attend, because he did not want to meet with Jeff Clark alone.

2 [REDACTED] Yeah.

3 Mr. Donoghue. We went up to the SCIF. We locked up our phones outside.
4 We went into one of the conference rooms. It was just the three of us. We had a
5 discussion. Jeff Clark again stated that the President had offered him the position and
6 he was thinking about what to do.

7 I asked him at the outset of that meeting, did you get your DNI briefing?
8 Because I wanted to follow up and make sure that he'd gotten the things he requested
9 and nail down what the results were. So he said, yes, that he had gotten the DNI
10 briefing, and he acknowledged that there was nothing in that briefing that would have
11 supported his earlier suspicion about foreign involvement.

12 And we then had a discussion about whether or not there were any other
13 allegations that would warrant Department action. And basically what Jeff was saying
14 was, despite the fact that the intelligence community did not support his suspicions, he
15 still felt strongly that we should be sending a letter out to Georgia and the other swing
16 States. And then we had a discussion along those lines.

17 BY [REDACTED]:

18 Q Yeah. There's discussion about the allegations about the trucker in Georgia
19 and whether or not he had called the U.S. attorney down there? Is that right,
20 Mr. Clark -- I mean, Mr. Donoghue? You asked Mr. Clark about contact with Pak?

21 A Yes, I did.

22 I'm just trying to find my notes from that meeting. I think there's an exhibit
23 here.

24 Q I actually don't think we have any notes from this meeting with Clark.

25 A I guess I -- yeah, I don't see them here. I thought there were notes.

1 Maybe I'm mistaken, but --

2 [REDACTED]. To be clear, there is a one-page note that I do think you have
3 for January 2nd, for this meeting.

4 Mr. Donoghue. I know I've seen them in my prior testimony, so -- maybe they're
5 not marked as an exhibit. But I'll go, as best I can, off my recollection here.

6 [REDACTED] Yeah.

7 Mr. Donoghue. So we had this conversation in the SCIF. Jeff Clark says, well,
8 despite the fact that the IC doesn't have anything that calls this into question, I still think
9 there's a lot of fraud out there, I still think the Department should be taking action, and I
10 still think the Department should send that letter.

11 And, at that point, it got very confrontational, because we were not going to send
12 that letter.

13 And so the meeting went on for some time. He said something that made me
14 think that he had again been in contact with the President. And I said, you know, you,
15 again, have violated the White House contacts policy. I reminded him that I was his boss
16 and that I had directed him to do otherwise.

17 He said that he had talked to some people on the phone, essentially interviewed
18 witnesses over a phone, and that these people had information in Georgia and that there
19 was testimony in the Georgia Senate hearing that raised questions about Georgia, and so
20 on and so forth.

21 So he kept saying, there's so much there, there has got to be something to these
22 allegations, we have to act now, we're running out of time, we need to send the letter.
23 And that's the way that conversation went.

24 BY [REDACTED]:

25 Q Yeah. Was there any discussion of possible resignations if he became the

1 Acting Attorney General, in that meeting with him on the 2nd?

2 A No. No.

3 But we concluded, and he said something to the effect of, "Well, the President has
4 asked me to be Acting Attorney General. I told him I would give him a response on
5 Monday. I'm going to think about what I'm going to do, and I'll let you," Jeff Rosen,
6 "know."

7 He was also upset that I was there. Because I remember, early on, when we
8 walked in the room, he turned to the Acting Attorney General and said, I thought it was
9 just going to be the two of us. And the Acting AG said, "No. Rich needs to be here for
10 this. He knows more about what's going on. And we're the leadership team, and we
11 want to hear what you have to say."

12 Q Got it.

13 All right. And I appreciate you don't have your notes in front of you, but
14 anything else about the conversation, Mr. Donoghue, that you recall, the conversation
15 with Clark on the 2nd?

16 A It just got very heated, and it was left at that, that he would make a decision
17 over the next day or so and let Jeff Rosen know.

18 Q You described the earlier meeting with Mr. Clark as you were more
19 confrontational than Mr. Rosen, that Mr. Rosen was trying to play, I think it was your
20 term, "peacemaker" or was trying to find some common ground.

21 Did he play a similar role in this meeting, or had Mr. Rosen's approach to Clark,
22 had it changed and was it a different tone on the 2nd?

23 A It had certainly stiffened, but I think the overall tenor was that Jeff Rosen
24 was deeply disappointed. He had known this guy for decades, they worked together, he
25 respected him as an attorney, and he couldn't believe that, even after all this, even when

1 we let him get the briefing, that he was still pursuing this idea that, because there were
2 allegations out there, that was sufficient for the Department to send a letter like that.

3 So his demeanor was more of disappointment and, I suppose, some resignation.
4 I was more angry, and I'm sure that was evident to everyone.

5 Q Yeah.

6 Tell me what steps you and Mr. Rosen took after the meeting. When you
7 learned that Mr. Clark has gotten this offer, this job offer, what do you two decide to do,
8 and what do you then -- what steps do you take?

9 A We then went down to Jeff Rosen's office. We sat there for some time
10 talking about, what do we do now? I think we called Steve Engel, because we wanted
11 Steve to be updated on everything -- or I called Steve on my own or something like that.
12 But we talked about, what do we do, and is this the time to broaden the circle and let
13 other people know what's going on here, because we could be out of the Department
14 with virtually no notice.

15 And so DAG Rosen decided that, you know what? We don't know what's going
16 to happen. Let's just sleep on this tonight. We don't need to widen the circle at this
17 point.

18 Engel knew. I think Pat Hovakimian also knew at that point. And the four of us,
19 sort of, were going to keep it to ourselves, because we didn't want to create even more
20 issues for the Department at a time when the Department was already under tremendous
21 stress. And so --

22 Q Who was Pat Hovakimian?

23 A Pat Hovakimian had been DAG Rosen's chief of staff when I first got to
24 Washington in July. Pat was nominated to be the IG for the intelligence community.
25 And so, somewhere in the fall, he was moved out of the chief of staff position because

1 there was an expectation he would get confirmed and leave the Department.

2 The DAG moved another DOJ attorney into the chief of staff position, John Moran.
3 And Pat stayed on the staff. And DAG Rosen valued his judgment and his insights, and
4 so he kept him in the loop even though he was not technically the chief of staff at that
5 point.

6 Q All right.

7 Anything else happen on January 2nd, or do you, in fact, sleep on it and reconvene
8 in the morning on --

9 A Yeah.

10 Q -- Sunday, January 3rd?

11 A Yeah, we left it. Nothing happened that night, and then it all resumed on
12 Sunday.

13 Q Okay. Tell us about what happened on Sunday.

14 A Okay. So here's where I was, earlier, I think, conflating two different
15 things, the 3rd and the 2nd. It was on the 3rd, the afternoon of the 3rd, that we had the
16 prescheduled meeting with DOD relating to preparation for January 6th.

17 So I came in on the 3rd shortly before the 1:00 p.m. call. And DAG Rosen said to
18 me that he had spoken to Jeff Clark apparently just shortly before this. Jeff Clark had
19 told him that he had decided to accept the President's offer to serve as Acting Attorney
20 General but that Jeff Clark wanted to have one more meeting with Jeff Rosen before he
21 communicated that to the President. So that all happened on Sunday.

22 We then took the 1 o'clock call and we dealt with some of the January 6th
23 preparation matters. When that call was over, I said to him, "So what do you want to do
24 with Jeff Clark? Do you want to have a meeting with him? What do you want to do?"
25 And he said, "I'm going to have a meeting with him." And I said, "Okay, fine. Do you

1 want me there?" as I had been the day before. And he said, "No, I've known this guy for
2 decades. I'll meet with him one-on-one. That's fine. I'll deal with it. And we'll take
3 it from there."

4 So I went into my office. I worked on things throughout the afternoon. He
5 came down -- I think they met someplace in the building; maybe it was on the sixth floor.
6 But he came back, he came to my office, and he said, "I met with Clark. He asked me to
7 stay on as his DAG once he becomes the Acting Attorney General."

8 This clearly irritated the Acting Attorney General. He basically said, can you
9 believe the nerve of this guy? And he said that he told him he would absolutely not
10 remain on and that he would leave the Department.

11 And he said that Clark said he was going to communicate to the President
12 probably that day that he was accepting the offer.

13 At that point, I said, "Well, I guess we're done," and I began taking things off the
14 wall of my office. I had plaques hung up. I figured we were going to be out of there
15 within hours or a day or something like that. And I took out boxes and I began packing
16 up things, because I was going to resign as soon as Jeff Rosen was removed from the seat.

17 And I was packing up my office; Jeff Rosen went back to his office. And, after a
18 short while, he came back and he said, I talked to Pat, meaning Pat Cipollone, and Pat
19 says that, in his view, this is not a done deal and that we should go fight this out at the
20 White House.

21 And he asked what I thought about that, and I said, well, certainly, if there's any
22 shot of undoing this, we should do that. And he was of the same view. So we said, all
23 right, let's do that, let's fight this out. And we then talked about --

24 Q And let me stop you there, Mr. Donoghue. When you say "we," you and
25 Mr. Rosen are essentially aligned here, that it's the two of you together? The plan is, go

1 to the White House at Pat Cipollone's invitation and fight this out, versus Mr. Clark, who
2 was prepared to step in as Acting Attorney General?

3 A Yes, that's right.

4 Q Okay.

5 Before you go to the White House, do you take some steps to sort of get some
6 internal support within the Department or gather some information from others inside
7 the Department?

8 A We did. As we discussed next steps, I said to the Acting AG, you know,
9 "What can I do to help? What do you need?" And he said, "You know, it'd be helpful
10 to know what the AAGs would do."

11 He also said, "It's time to broaden the circle, because we don't know how this is
12 going to end. And, in all likelihood, it's going to end with Jeff Clark being the Attorney
13 General within the next few hours, so people need to know what's going on."

14 So he said, "Can you do a call with the AAGs and just let them know, one, what's
15 going on so they're prepared; and, two, if they have a view as to whether or not they
16 would take any action as a result of this, we should know that because it would help
17 inform the conversation at the White House."

18 Q Right.

19 A Pursuant to that, Pat Hovakimian and I set up a call at, I believe, 4:45 with
20 the AAGs. We had them call in on a conference line. We didn't get all of them, but we
21 got most of them. And they called in. Pat and I were in Pat's office, put it on
22 speakerphone.

23 I said, "I just want to read you in on some things that have been going on over the
24 last couple days you need to know." And I explained what had been going on.

25 And I said, "I don't want to put anyone on the spot, and I don't need an answer

1 right now, but if you have an answer, I need it quickly. We need to know what, if
2 anything, you would do."

3 "I'm telling you, I will resign immediately, because I am not going to stick around
4 for this. And the rest of you, you can make your own decision. That's fine. And we'll
5 respect the decision no matter what it may be."

6 "And, John," meaning John Demers, "I hope you do not resign, because you are
7 the NSD AAG, and we need stability, particularly if the Department leadership changes.
8 National security is too important to have turnover, so I hope you stick around."

9 "But the rest of you, give it some thought, and let me or Pat know in the next few
10 minutes if you have a decision. If you don't have a decision, that's fine. But if you do
11 have one, let me know."

12 And before we could even hang up, they began chiming in. First, the Civil Rights
13 AAG chimed in and said, "I don't need to think about this. I'm out. If this happens,
14 there's no way I'm sticking around for this." And then the others, I think they all chimed
15 in on the call. If they didn't, they called immediately after and said, "Put me on the list."

16 And so it was unanimous; everyone was going to resign if Jeff Rosen was removed
17 from the seat.

18 Q All right.

19 So, after this conversation with the Assistant Attorneys General in the afternoon
20 of Sunday, everybody agrees, Mr. Donoghue, except for Mr. Demers, who's the head of
21 NSD, that they're going to quit if the President makes a leadership change at the top of
22 the Department?

23 A Yes.

24 Q And did you convey that to Mr. Rosen before the two of you go to the
25 White House?

1 A Yes.

2 Q All right. So, when you get to the White House -- or is there anything else
3 that happens before you go over there with Mr. Rosen?

4 A Just one other point that's relevant.

5 Q Yeah.

6 A Apparently, there were calls back and forth. My sense was Pat Cipollone
7 was in the middle of these different phone calls between Jeff Rosen and Jeff Clark. I
8 don't think they talked to each other directly at this point.

9 Q Okay.

10 A But the bottom line was, Jeff Clark said he would only agree to meet at the
11 White House if Jeff Rosen came alone. And Jeff Rosen relayed that to me. And so, as
12 we were getting toward the time to leave, I was again asking, "Is there anything else I can
13 do? What do you need me to do?" And he said, "I need you to come to the
14 White House."

15 And I said, "That's fine. I'll do whatever you want. But didn't Clark, sort of, lay
16 out this condition?" And he just waved and said, "I don't care what Jeff Clark wants. I
17 want you to come to the White House. You know these issues better than me," in terms
18 of the election investigations.

19 And he said, "You know what we'll do? We'll have you wait outside the Oval. If
20 I don't need you, you don't need to come in, but if questions arise that I can't answer,
21 then we'll pull you in."

22 And we then went to the White House.

23 Q About what time of day is it when you get to the White House?

24 A 6:00 p.m.

25 Q All right. Do you wait outside the Oval when Mr. Rosen goes in?

1 A The meeting was set for 6:15. I think we went directly to the White House
2 Counsel's Office and talked very briefly with Pat Cipollone and Pat Philbin and then had to
3 head to the Oval Office. When we got down --

4 Q What was their position, Mr. Donoghue, on this possible leadership change,
5 Mr. Cipollone and Mr. Philbin, if they were aligned?

6 A They were completely opposed to it.

7 So I think we met with them and then went to the Oval. I sat outside the Oval
8 Office down the hallway on a couch. There was a television. And the Acting Attorney
9 General went back to the Oval.

10 I was sitting on the couch. I remember that whatever news channel was on was
11 talking about the President's call with Raffensperger in Georgia. And this was the first
12 I'd heard of that, while I'm sitting outside the Oval. And they were playing the audio and
13 talking about the call. And I assumed that was going to overwhelm the conversation in
14 the Oval Office, but when I got there, no one even mentioned it. So apparently that
15 wasn't controlling the situation.

16 While I was sitting on the couch, I saw General Milley walk by. And then, very
17 shortly after that, the chief of staff walked by. He just nodded and said, "Good luck,"
18 and went on his way.

19 And after about 25 minutes of sitting on the couch, one of the administrative
20 assistants walked by. She said, "Are you supposed to be in this meeting with the
21 President?" I said, "No, I'm only here to answer questions if they come up and no one
22 has the answer." She said, "Okay," went back, and then she came back a moment later
23 and said, "The President wants you in this meeting." So I got up and I walked into the
24 Oval Office.

25 Q And it had been going on, you think, roughly, Mr. Donoghue, 25 minutes or

1 so when you joined at the President's invitation?

2 A That's right.

3 Q All right. And who was inside the meeting when you got there?

4 A When I entered the Oval Office, the President was behind the desk, and it
5 was Pat Cipollone, Pat Philbin, a White House lawyer named Eric Herschmann, Jeff Clark,
6 Jeff Rosen, Steve Engel, and then me.

7 Q Are you sure Mr. Herschmann was a White House lawyer?

8 A He was a lawyer who worked at the White House. I'm not -- initially I
9 thought he worked in the White House Counsel's Office, but I think later someone told
10 me that wasn't the case. I don't remember. His role was never clear to me. I know
11 he was a lawyer from New York. I know he had been a prosecutor at some point. But I
12 don't know what his title exactly was. I'd seen him in some meetings previously, but I
13 didn't know exactly what his role was.

14 Q Okay.

15 All right. And, again, no notes of this meeting. Is that right? You don't take
16 notes -- you were inside the Oval Office and, you indicated before, didn't take notes when
17 you were in discussions inside that office.

18 A No.

19 Q All right. Well, tell us what you remember, then, about the conversation.

20 What was the topic when you arrived, and how did it evolve from there?

21 A The meeting took about another 2-1/2 hours from the time I entered. It
22 was entirely focused on whether there should be a DOJ leadership change. So the
23 election allegations played into this, but they were more background than anything else.

24 And the President was basically trying to make a decision and letting everyone
25 speak their minds. And it was a very blunt, intense conversation that took several

1 hours. And Jeff Clark certainly was advocating for change in leadership that would put
2 him at the top of the Department, and everyone else in the room was advocating against
3 that and talking about what a disaster this would be.

4 Q What were Clark's purported bases for why it was in the President's interest
5 for him to step in? What would he do, how would things change, according to Mr. Clark
6 in the meeting?

7 A He repeatedly said to the President that, if he was put in the seat, he would
8 conduct real investigations that would, in his view, uncover widespread fraud; he would
9 send out the letter that he had drafted; and that this was a last opportunity to sort of set
10 things straight with this defective election, and that he could do it, and he had the
11 intelligence and the will and the desire to pursue these matters in the way that the
12 President thought most appropriate.

13 Q You said everyone else in the room was against this. That's Mr. Cipollone,
14 Mr. Philbin, Mr. Herschmann, you, and Mr. Rosen. What were the arguments that you
15 put forth as to why it would be a bad idea for him to replace Rosen with Clark?

16 A So, at one point early on, the President said something to the effect of,
17 "What do I have to lose? If I do this, what do I have to lose?" And I said,
18 "Mr. President, you have a great deal to lose. Is this really how you want your
19 administration to end? You're going hurt the country, you're going to hurt the
20 Department, you're going to hurt yourself, with people grasping at straws on these
21 desperate theories about election fraud, and is this really in anyone's best interest?"

22 And then other people began chiming in, and that's kind of the way the
23 conversation went. People would talk about the downsides of doing this.

24 And then -- and I said something to the effect of, "You're going to have a huge
25 personnel blowout within hours, because you're going to have all kinds of problems with

1 resignations and other issues, and that's not going to be in anyone's interest."

2 And so the President said, "Well, suppose I do this" -- I was sitting directly in front
3 of the President. Jeff Rosen was to my right; Jeff Clark was to my left. The President
4 said, "Suppose I do this, suppose I replace him," Jeff Rosen, "with him," Jeff Clark, "what
5 do you do?" And I said, "Sir, I would resign immediately. There is no way I'm serving
6 1 minute under this guy," Jeff Clark.

7 And then the President turned to Steve Engel, and he said, "Steve, you wouldn't
8 resign, would you?" And Steve said, "Absolutely I would, Mr. President. You'd leave
9 me no choice."

10 And I said, "And we're not the only ones. You should understand that your
11 entire Department leadership will resign. Every AAG will resign." I didn't tell him
12 about the call or anything, but I made it clear that I knew what they were going to do.

13 And I said, "Mr. President, these aren't bureaucratic leftovers from another
14 administration. You picked them. This is your leadership team. You sent every one
15 of them to the Senate; you got them confirmed. What is that going to say about you,
16 when we all walk out at the same time? And I don't even know what that's going to do
17 to the U.S. attorney community. You could have mass resignations amongst your
18 U.S. attorneys. And then it will trickle down from there; you could have resignations
19 across the Department. And what happens if, within 48 hours, we have hundreds of
20 resignations from your Justice Department because of your actions? What does that say
21 about your leadership?"

22 So we had that part of the conversation. Steve Engel, I remember, made the
23 point that Jeff Clark would be leading what he called a graveyard; there would be no one
24 left. How is he going to do anything if there's no leadership really left to carry out any of
25 these ideas?

1 I made the point that Jeff Clark is not even competent to serve as the Attorney
2 General. He's never been a criminal attorney. He's never conducted a criminal
3 investigation in his life. He's never been in front of a grand jury, much less a trial jury.

4 And he kind of retorted by saying, "Well, I've done a lot of very complicated
5 appeals and civil litigation, environmental litigation, and things like that." And I said,
6 "That's right. You're an environmental lawyer. How about you go back to your office,
7 and we'll call you when there's an oil spill."

8 And so it got very confrontational at points.

9 And Pat Cipollone weighed in at one point, I remember, saying, you know, "That
10 letter that this guy wants to send, that letter is a murder-suicide pact. It's going to
11 damage everyone who touches it. And we should have nothing to do with that letter.
12 I don't ever want to see that letter again." And so we went along those lines.

13 I remember Eric Herschmann chimed in several times, saying that, whatever Jeff
14 Clark wanted to do or thought he could do, there was no reason to think he could really
15 do it.

16 I remember saying at some point that, you know, Jeff wouldn't even know how to
17 find his way to Chris Wray's office, much less march in there and direct the FBI what to
18 do, and that, if you walked into Chris Wray's office, he wouldn't even know who you are.

19 So we had these conversations that went around and around and were very blunt
20 and direct. And that went on for 2-1/2 hours.

21 Q At one point, did the President disparage Mr. Rosen or talk about
22 Mr. Rosen's inaction or unwillingness to do anything about the election?

23 A He did say several times, "You two," pointing at Mr. Rosen and me, "You two
24 haven't done anything. You two don't care. You haven't taken appropriate actions.
25 Everyone tells me I should fire you," and things of that nature.

1 He came back to that at the very end when he decided against a leadership
2 change. And he announced that, and then he came back to that point and he said, "And
3 I know that these two here, they're not going to do anything. They're not going to fix
4 this. But that's the way it is, and I'm going to let it go anyway."

5 Q Did Mr. Cipollone say anything about what he would do with respect to a
6 potential resignation if the President made this change?

7 A He did at some point. I guess that was on the heels of us talking about how
8 there would be resignations in the Department. And I think Pat Cipollone said, "Well,
9 I'm not going to stand for this, I'm not going to be here if this happens either."

10 Q So he said he would resign or not stand for it, would not be here, if the
11 President made this change.

12 A Right.

13 Q Who, Mr. Donoghue, was, sort of, the primary advocate or voice against the
14 leadership change? Was it you personally, or was it sort of a consensus and everyone
15 was sort of equally chiming in? Or just give me a better sense as to, sort of, who was
16 doing most of the talking and was the most strenuous advocate.

17 A It was definitely a consensus. We were all on the same page except for Jeff
18 Clark. But we played different roles.

19 For one thing, Jeff Rosen was in a bad position because he was defending his own
20 job. So anything he said, obviously, was very self-interested. And so he wasn't in the
21 best position to make some of these arguments. And by demeanor, he just has a
22 different demeanor, as does Pat Cipollone, as does Steve Engel. So everyone played
23 their own role. My demeanor is more aggressive and more blunt, and so I played that
24 role.

25 And so everyone was on the same page, advocating for the same thing in very

1 different ways, and I think that had an impact on the President. I think he likes to see
2 that difference of view and different approach, and I think he lets people speak their
3 mind and fight it out in front of him before he makes a decision.

4 Q I mean, I've heard this meeting described sort of like an "Apprentice"-like
5 meeting, where there's a firing decision at the end. Is that a fair characterization?

6 A I can honestly say I've never seen 1 minute of "The Apprentice" in my life, so
7 I can't opine about that.

8 Q Fair enough.

9 Anyone else threaten to resign? Mr. Philbin or Mr. Herschmann or anyone else
10 who was present? Mr. Meadows?

11 A Meadows was not there.

12 Q I'm sorry, Mr. Meadows wasn't there. Excuse me. My mistake.

13 A Right. I don't remember if anyone else said anything specifically. I think
14 Pat Philbin and Pat Cipollone were always sort of viewed as a package deal, so --

15 Q Yeah.

16 A -- if I thought about it for a moment, I would've thought, if Cipollone is
17 leaving, Philbin's leaving too.

18 But it was more a matter of me saying, "You're going to lose your Department
19 leadership," and then Pat Cipollone stepping in and saying, "And, basically, you're going
20 to lose your White House counsel as well."

21 Q Yeah. Okay.

22 After, I believe, he makes the decision to stay the course and leave Mr. Rosen in,
23 does he then start talking about the U.S. attorney in Atlanta, Mr. Pak?

24 A I think that was actually before that.

25 Q Okay.

1 A I think the President really didn't announce his final decision until probably
2 about the last 15 minutes of the meeting.

3 Q Uh-huh.

4 A But somewhere in the middle of the meeting someone mentioned Atlanta,
5 and the President said, "Oh, yeah, Atlanta, Atlanta." And then he picked up a piece of
6 paper that was on his desk, and he started waving it. And he said, "No wonder nothing's
7 been found in Atlanta, because the U.S. attorney there is a Never Trumper."

8 And I had no idea what he was talking about. I said, you know, "Mr. President, I
9 don't know what you mean." And then he had this piece of paper, and he read a quote
10 from it that was purportedly from B.J. Pak, who was the U.S. attorney in Atlanta. It was
11 critical of the President.

12 And I didn't know where this quote came from. I had no idea what he was
13 talking about. But I just said, look, Mr. President, I don't even know what a Never
14 Trumper is, but I'll tell you, all your U.S. attorneys were vetted, and I doubt B.J. said
15 anything like that. But whatever it was, B.J. has been doing his job.

16 And he said, "No, no, no. He's a Never Trumper." He was very adamant about
17 that at that point. "This guy is a Never Trumper. He should never have been in my
18 administration to begin with. How did this guy end up in my administration?"

19 And then he said, "I want you to fire him," to me. I responded, "Mr. President,
20 I'm not going to fire him. There's no reason to fire him." And he said, "Well, then I'm
21 going to fire him." I said, "Well, you should just know, before you make that decision,
22 that he told me a couple days ago he was submitting his resignation on Monday," which
23 was the next day.

24 So, if you want to fire someone who's resigning -- and then Pat Cipollone stepped
25 in and said, "Well, that's ridiculous. The guy's resigning. We're not going to fire him."

1 And the President said, "Fine. I'm not going to fire him then, but when his
2 resignation comes in tomorrow, it's accepted immediately. Tomorrow's his last day as
3 U.S. attorney." And Pat said, "Fine. We'll deal with that later" and, sort of, took it off
4 the table.

5 Q Uh-huh.

6 A And then the President said, "What do you know about Bobby Christine?"
7 Bobby Christine was the U.S. attorney in the Southern District of Georgia. I was
8 surprised at the question. I didn't know where it was going. I said, "Bobby Christine is
9 an excellent U.S. attorney." He said, "Yes, that's what I've heard. I want Bobby
10 Christine to run the Northern District of Georgia."

11 I said, "Mr. President, Bobby Christine is already running the Southern District of
12 Georgia. B.J. will have a first assistant. When he leaves, the first assistant will step up
13 and be the U.S. attorney." He said, "No. I want Bobby Christine to do it, because if he
14 is really good the way people say, maybe he'll do the job."

15 And then he yelled for one of the administrative assistants to get Bobby Christine
16 on the phone. They did in very short order. Bobby ended up on the phone. He was
17 clearly confused as to what was going on.

18 The President said, "Bobby, this is President Trump. I'm sitting here with Rich,
19 Jeff, and some other people. I want to know, are you able to run the Northern District
20 of Georgia? Because B.J. Pak's going to be leaving."

21 And Bobby was clearly confused and said, "Mr. President, I can do whatever is
22 asked in that regard." He said, "Great, Rich will call you later and explain everything"
23 and hung up. And that was that.

24 So that was left as: B.J. was resigning the next day, his resignation would be
25 accepted same day, and Bobby would take over the Northern District of Georgia for the

1 remaining few weeks of the administration.

2 Q Did he saying anything more about Bobby Christine and why he thought
3 highly of him or thought that he would do something different than B.J. Pak had done?

4 A No, just that he had heard great things about Bobby. I knew that Bobby
5 was a one-star general in the -- I believe it was the Georgia National Guard. And so he
6 had long military history. I know that's something that the President favors. I don't
7 know if that played into his understanding or not.

8 Q Uh-huh.

9 All right. Anything else you remember, Mr. Donoghue, before the last
10 15 minutes, when he says, "Okay, I'm not going to do it, I'm not going to make a change"?
11 Any other name come up, subject matter discussed, or anything else that's noteworthy
12 about the 2-1/2-hour meeting?

13 A There was a lot there. It was certainly a rollercoaster ride of a meeting, so
14 I'm sure there are things I'm not remembering. I think at some point he had asked
15 about names of other U.S. attorneys. You know, what do you think of this guy? What
16 do you think of that guy? And I just said: Good U.S. attorneys, they're solid, they're
17 doing their job.

18 Q Uh-huh.

19 When he announced his decision, did he give a reason why he was not going to
20 follow through with the change to put Clark in as the Acting Attorney General?

21 A So, in about the last 15 minutes, after he'd heard everyone out extensively,
22 he said, "All right, I've heard everyone, and we're not going to do this."

23 He looked at Jeff Clark. He said, "I appreciate your willingness to do it. I
24 appreciate you being willing to suffer the abuse. But the reality is, you're not going to
25 get anything done. These guys are going to quit. Everyone else is going to resign. It's

1 going to be a disaster. The bureaucracy will eat you alive. And no matter how much
2 you want to get things done in the next few weeks, you won't be able to get it done, and
3 it's not going to be worth the breakage."

4 I think someone else had used that term earlier, maybe Pat Cipollone, "Is it really
5 worth the breakage?" And the President said, "It's not going to be worth the breakage
6 to make this change at this point."

7 Q Uh-huh.

8 A And he said again, "These two, I know, are not going to get it done. But
9 that is what it is at this point." He talked about how disappointed he was in us, but said
10 to Clark that, I'm just not going to do this.

11 At that point, Clark began trying to get the President to change his mind. He said
12 a number of things -- you know, history is calling, this is our opportunity, we can get this
13 done, and so on and so forth. And the President then just sort of doubled down and
14 said, "No, we're not going to do it."

15 Q Uh-huh.

16 A At that point, the President looked at me and said, "So now what happens
17 with him?", gesturing toward Jeff Clark. I didn't understand the question. I said, "Sir?"
18 And he said, "Are you going to fire him?"

19 I said, "No, I'm not going to fire him. I don't have the authority to fire him. He's
20 a Senate-confirmed Assistant Attorney General." And the President said, "Well, I'm not
21 going to fire him." I said, "Well, that's fine then, sir. We should all just go back to
22 work."

23 And we all got up and walked out of the Oval Office.

1

2 [2:38 p.m.]

3

BY [REDACTED]

4

Q The meeting ended -- you said 2-1/2 hours -- close to 9 o'clock at night by

5

this point on January 3rd?

6

A Yeah. It's after 9:00. I think it was about 3 hours total.

7

Q Where'd you go next?

8

A We walked out of the Oval Office. We went up to the box where we'd

9

stored all our phones. We were removing them, and Jeff Clark said something to the

10

effect of, "Look, gentlemen, I know we were all in there advocating what we thought was

11

best for the country, so no hard feelings." And no one responded. We just looked at

12

him. He took his phone, he turned, and he walked out.

13

We went briefly up to the White House Counsel's Office and then headed back to

14

DOJ headquarters.

15

Q So it's fair to say, a sense of relief? You and Mr. Cipollone, Mr. Rosen, Mr.

16

Philbin in that office felt like you had averted a negative outcome?

17

A Yes, very much so.

18

Q Did you take steps then to reassure the assistant attorneys general that you

19

had spoken with earlier that afternoon about the outcome?

20

A When we got back to the Department, we had a quick conference call with

21

them to let them know just generally how it had gone, that there was a long meeting in

22

the Oval Office, that there would not be leadership change, and that we should all just

23

focus on the work come Monday morning.

24

Q All right.

25

A couple of phone calls later that night. Does the President call you directly after

1 this meeting is over, a little bit later that night, around 10 o'clock?

2 A Yes. Yes. He called me probably 10:00, 11:00, something like that, at
3 night on my cell phone. He said that he had just received word that somewhere outside
4 Atlanta there was a truck that was, in his words, "in the custody of an ICE agent" and that
5 it contained shredded ballots and that this somehow was evidence of fraud.

6 So I said, "Well, Mr. President, if it's an ICE agent, understand, they don't belong
7 to DOJ; they belong to DHS. And if they need anything from us, they know how to do
8 that. So I'll just leave that to them."

9 And he said, "Okay, fine. That's fair. But do me a favor and make sure Ken
10 Cuccinelli knows about it," because Ken was above ICE as part of the DHS leadership. So
11 I said that I would pass that along to Ken.

12 I got in touch with Ken. I said, "I received a call from the President." He had
13 the agent's name. I don't remember what the agent's name was, but it was something,
14 a specific ICE agent down in Atlanta. I gave Ken the agent's name. I said, "This is what
15 the President relayed. Do whatever you will with it. If you need help from us, let us
16 know, but, otherwise, I'm leaving this with you." And he said, "Fine," and he took care
17 of it.

18 Q All right.

19 Did you also then try to reach B.J. Pak, the then-U.S.-attorney in Atlanta?

20 A I did. I sent B.J. an email asking him to call me. He did call me. I told
21 him about just the portion of the conversation that related to him.

22 He told me that, in fact, he did say that quote but that he had said it back in 2016
23 when he was serving in the Georgia legislature. He was critical of the President. But,
24 nonetheless, he got the U.S. attorney job.

25 And I said, "Well, look, obviously, the President didn't know this. He was pretty

1 upset. He was adamant that you're a Never Trumper and that you should never have
2 been in his administration and that, when your resignation comes in tomorrow, he wants
3 it accepted right away, and you'll be out."

4 I did, however, tell him, pursuant to a conversation that Jeff Rosen and I had back
5 at the Department headquarters, that he could stay on for 2 weeks as a DOJ employee if
6 he wanted to.

7 Jeff Rosen came up with that. He said, you know, we can make B.J. a Schedule C
8 employee, keep him on for a couple weeks, make his exit more graceful. The President
9 was very clear that he couldn't serve as the U.S. attorney after tomorrow, but he didn't
10 say he wanted him out of the Department.

11 So Jeff Rosen said, "Offer that to B.J. You know, let me know that he's got our
12 support if he wants to stay on for a few weeks to ease his exit. That's fine with us." I
13 made that offer to B.J. I told him it was coming from Jeff Rosen. He said he
14 appreciated it; he would think about it and let me know.

15 He then called me back early the next morning, said he was on his way to his
16 office. He was going to clear out his office and leave. He appreciated the offer, but he
17 was not going to take it if the President didn't want him in the Department. He was just
18 going to go.

19 Q Uh-huh. And then he did, in fact, resign abruptly and leave on January 4th.
20 Is that right?

21 A Yes.

22 Q Okay.

23 And then did you also follow up with Mr. Christine, speak to him about this truck
24 allegation when he became the acting U.S. attorney in Atlanta?

25 A Yes, I talked to Bobby that night. I gave him a very brief explanation. I

1 said, "I'm not going to get into details. B.J.'s leaving. He's going to be out tomorrow.
2 For whatever reason, the Presidents wants you to take over Northern District." I think
3 we had to issue some sort of order or something. I said, "The administrative guys will
4 take care of that first thing tomorrow morning. And just go up there and do whatever
5 you see fit."

6 And he did. He spent a couple weeks up there. Ultimately, he concluded that
7 the election matters that were brought to the attention of that office were handled
8 appropriately, I guess. I don't want to speak for him, but I think that was generally what
9 his impression was.

10 But one of those related to this truck. I don't think I'd talked to him about the
11 truck that night because I think I'd probably talked to Bobby Christine before the
12 President called me.

13 Q Yeah.

14 A But, within the next day or two, that came up, that this truck had been
15 located. DHS had the truck. And DHS talked, I think, to FBI; they talked to the U.S.
16 Attorney's Office. What do you do about this truck? And so now that was Bobby's
17 issue.

18 And Corey Amundson, who was the head of PIN, was also down in Atlanta because
19 the special election was taking place that day, that Tuesday. And so I basically said to
20 them, "Look, you two are down there. You two know what we do and don't do. I trust
21 your judgment. Figure it out. If you need something, let me know, but, other than
22 that, I'm leaving this to you guys."

23 Q Yeah.

24 Yeah, there's an exhibit that I -- Greg, I apologize -- sent to you late last night
25 because we just got an unredacted version. It's exhibit 58.

1 It's just a one-page email, Mr. Donoghue, that you sent directly to Bobby Christine
2 on this truck issue. Do you see that?

3 A Yeah. Right.

4 Q And it indicates, "As discussed with both of you" -- and you're copying
5 Mr. Amundson from PIN -- "while we're all skeptical of this claim, we should do what we
6 can today within our established policies, and no more."

7 You're conveying to both Christine and Amundson some skepticism about the
8 claim, but suggesting that they follow protocol and evaluate the credibility of this
9 allegation respect to the truck. Is that right?

10 A Yes.

11 Q And your understanding -- I think you just said that they did that and found
12 that there was no reason -- it didn't give them any pause, with respect to the overall
13 integrity of the Georgia election.

14 A Right.

15 And if I remember right with regards to the truck specifically, I think the
16 explanation was, yes, the truck was full of shredded ballots, but it was full of shredded
17 ballots from a prior election, and that what was going on was, through the routine
18 records-retention practices of the county or the State, old ballots were being shredded to
19 make way for the 2020 ballots so that there would be room to store them. I think that
20 was the explanation for that. And that made perfect sense.

21 Q Okay.

22 ██████████ All right. Let me stop there and ask, Ms. Cheney, if you have any
23 specific can questions about that last -- these White House meetings and the current line
24 of questions.

25 Ms. Cheney. I don't. Thanks ██████████

1 ██████████ Okay. I'm going to -- just a couple more things from me before I
2 turn it over to ██████████, Mr. Donoghue.

3 BY ██████████:

4 Q You were a career military and Department of Justice professional, years and
5 years of honorable public service. I'm just wondering how someone like you, how you
6 felt about all of this, this whole series of events where the President of the United States
7 is persistently pushing you and the Department to take these actions. How did that
8 affect someone like you with that long record of honorable and career service?

9 A The whole thing was a little bit surreal, of course. And, frankly, I was just
10 glad to be in the position that I was in at the time it happened. I was glad to be there
11 with Jeff Rosen, with Steve Engel, and the others. And I thought we were a good team
12 that were acting -- the team was acting in the best interests of the country. I was just
13 glad to be part of it. That's all.

14 Q What, in your view, would've happened if you hadn't stood up or if Mr. Clark
15 had been installed as Acting Attorney General?

16 Mr. Andres. I mean, I'm not sure we really want to get into too many
17 hypotheticals, but, you know, if you want to answer that, Rich.

18 Mr. Donoghue. I assume that if Mr. Clark had been put in the position he
19 would've sent the letter out. But, frankly, I think it probably all would've run aground at
20 that point. I think it would've triggered mass resignations, and I think none of the
21 investigations would've actually gotten done in the timeframe.

22 I think it would've been so wildly disruptive that, while the letter itself would be
23 damaging both to the Department and the country, I honestly don't think any of it
24 would've changed the outcome. It's just so hard to imagine that so many things
25 would've happened in such a short period of time that the outcome would have changed

1 in any way.

2

BY [REDACTED]

3

Q Uh-huh.

4

Of all the people around the President that were in these meetings or

5

conversations, besides Mr. Clark, was there anyone else who was supportive of what the

6

President was suggesting or seemed to be concerned about the election fraud, besides,

7

again, the President himself in the multiple conversations and Mr. Clark?

8

A Not in the meetings I attended, no.

9

Q Was it rather the case, Mr. Donoghue, that everyone else was, like you,

10

telling him that there was not sufficient basis to do some of the things that he

11

contemplated -- Mr. Cipollone, Mr. Philbin, Mr. Meadows, others?

12

A In the meetings I was in, yes, that's correct. But it was also clear that a lot

13

of other people were talking to the President and telling him something diametrically

14

opposed to what we were saying to him.

15

Q Yeah. And were those people outside of the government, as far as you

16

could tell?

17

A As far as I could tell, yes. I had no interaction with them. But, yeah, you

18

had the Kurt Olsens and other people who were clearly in contact with the President and

19

telling him different things.

20

Q Okay.

21

[REDACTED] All right. I don't have anything else. Do you want to take a

22

break or march right into the January 6th stuff? Do you want 5 minutes?

23

Mr. Andres. I just want to take a break to make sure there's nothing we want to

24

add or not to --

25

[REDACTED] Yeah.

1 Mr. Andres. -- this portion. And we can, sort of, break and start the second
2 part. So maybe just give us 10 minutes and come back?

3 [REDACTED] That's fine. I appreciate that, Greg. Take your time.

4 Mr. Andres. Okay, good.

5 [Recess.]

6 [REDACTED] Thanks. So I just wanted to then start.

7 EXAMINATION

8 BY

9 Q Our focus for hopefully the next couple hours will be on the preparations for
10 January 6th. But, obviously, it struck me that the time period from the events of the last
11 few hours that you just discussed with my colleague essentially overlaps with the
12 preparations the Department was taking for January 6th.

13 Is that fair to say, Mr. Donoghue?

14 A Yes, that's right.

15 Q So from the end of December until the 6th itself.

16 A Right.

17 Q What impact do you believe that DOJ's position of not investigating the
18 alleged election fraud had on the significance of January 6th itself, the joint session?

19 A Well, I think I'd have to address that by talking about what I think would've
20 happened if we had followed the more traditional approach.

21 So you have all these allegations about fraud that supposedly changed the
22 outcome of the election. Had we not done what Attorney General Barr instructed us to
23 do and conduct at least some sort of limited investigations, I think the Department would
24 never have been able to comment one way or the other as to whether there are merits to
25 these allegations. And so, because we were able to conduct some, sort of, very limited

1 investigations on these key allegations, the AG was in a position to say that they're not
2 supported by the evidence and, therefore, there's no reason to doubt the outcome of the
3 election.

4 Now, we still had January 6th; we still have, to this day, tens of millions of
5 Americans who doubt the outcome. So it obviously didn't avoid that. But I think the
6 situation would've been even worse if the Department were to say, well, we, as pursuant
7 to our practice, sat on our hands, didn't do any investigation, so we can't tell you whether
8 there's any truth to this or not.

9 Q But my question is, by the Department saying, we are not going to
10 investigate the number of claims that you just walked through that the White House
11 wanted DOJ to investigate -- if those investigations had happened, would the joint session
12 certification have happened? I'm not talking about the rally, but there would've been --

13 Mr. Andres. I'm sorry [REDACTED]. I don't think that's what the testimony was or
14 what Rich said. Can you just break that down a little more, when you say --

15 [REDACTED]. Sure.

16 Mr. Andres. -- the Department didn't investigate?

17 BY [REDACTED]

18 Q If the investigations that the White House had requested were open, were
19 being pursued by Department of Justice, in your, you know, understanding of the
20 certification, the significance of the joint session, would that still have been able to occur?

21 A So I think the answer is, the Department did do investigations, albeit limited
22 ones.

23 So, if you take the allegation about the difference between the number of votes
24 certified and the number of votes cast in Pennsylvania, we looked at it, we addressed it, it
25 was easy to dispel that allegation.

1 If you look at the claim from the truck driver who supposedly drove ballots from
2 New York to Pennsylvania, we looked at it, we did the investigation, there was nothing to
3 it.

4 If you look at the allegations relating to the State Farm Arena, we talked to the
5 witnesses, we reviewed the video, we looked at it.

6 This issue about the shredded ballots in Georgia, we looked at it.

7 You know, we didn't conduct sprawling investigations with search warrants and
8 subpoenas and things like that because it just wasn't necessary, but we did look at each
9 of these allegations, at least the ones that purported to be of such a scale that they could
10 have changed the outcome in a particular State.

11 And, because we looked at them, I think we were in a position -- the Attorney
12 General was in a position to say publicly that we don't see it and the American people
13 should trust the outcome.

14 So it wasn't a matter of we refused to do -- we certainly didn't do everything the
15 President wanted, but we certainly did take what I viewed as appropriate steps to
16 determine whether or not there was anything to these allegations, and, because we did
17 that, we were able to address it.

18 Q Understood.

19 So I want to start, then, with exhibit 29. There was an email from AAG Rosen
20 requesting a -- to the then-acting U.S. attorney of D.C., Michael Sherwin about requesting
21 a meeting about the preparations for January 6th. That should be exhibit 29 in your
22 binder.

23 A Okay.

24 Q Now, if you look at that email that was sent on December 28th -- and there
25 appeared to be no response from Mr. Sherwin.

1 A Right.

2 Q What prompted Mr. Rosen to want to request a meeting with Michael
3 Sherwin about January 6th specifically?

4 A So we knew that January 6th was on the calendar. We knew, obviously,
5 that was the day that the electoral college votes were going to be reported out in the
6 Senate, and we knew that there were going to be protests.

7 So, on the 28th, that Monday, when we came to work, we shifted our focus, in
8 part, to preparing for that. And so the Acting AG wanted to talk to Mike Sherwin, who
9 was the acting U.S. attorney in D.C., about what the preparations were, how they were
10 going, was there anything we could or should be doing to make sure that we were fully
11 prepared for the 6th.

12 And so they reached out to him. Obviously, there was some difficulty in getting a
13 hold of him. And I believe he had a family member who was ill at that time, and that
14 impacted his availability a little bit. But we did have discussions with Mike Sherwin that
15 week and straight through the 6th.

16 Q Apart from it being on the calendar, was there any intelligence about the
17 potential for violence that prompted Mr. Rosen to want to have that meeting?

18 A Yes. We were concerned about the potential for violence just because we
19 had seen that people were very upset about the election. We had seen, through the
20 summer, riots around the country where there had been violence. We were well aware
21 of the political tension in the country. And we knew that if you have tens of thousands
22 of very upset people showing up in Washington, D.C., that there was potential for
23 violence.

24 Q And who was in charge of briefing yourself and Mr. Rosen in terms of what
25 the available intelligence was?

1 A We got information through a number of sources. Primarily it came
2 through the FBI. As I think I indicated earlier, we had regular meetings scheduled with
3 the FBI throughout the week. We would also talk to them -- I talked to Dave Bowdich
4 several times a day at this point, I think. So the information flow was pretty free. But
5 they did give us updates as we got closer to the 6th about what they were seeing in terms
6 of intelligence.

7 We also got intelligence from other sources, such as Mike Sherwin, what he was
8 hearing and seeing; DHS was doing intelligence; MPD was doing intelligence. So all
9 these different law enforcement agencies who were working in conjunction in
10 preparation for the 6th were doing intelligence and sharing it with one another.

11 Q So, turning to exhibit 30, there's a handwritten note that you have from the
12 call with Michael Sherwin.

13 A Yes.

14 Q Do you remember who was on that call other than yourself and
15 Mr. Sherwin?

16 A The DAG was on this call. I'm not sure if anyone else was, but it was at
17 least the three of us.

18 Q So, in the handwritten notes, you say that the -- I believe it says -- suggests
19 the crowd will be less than 10,000 -- is that right? -- at that point on December 30th.

20 A Right. The first line says, "Social media suggests less than 10,000." And
21 then underneath there it says, "Also looking at hotel reservations and travel."

22 Q Who provided the information about social media?

23 A Mike Sherwin did.

24 Q Was it your understanding that Michael Sherwin's office or the Washington
25 Field Office had social media information about January 6th?

1 A I knew that the FBI and the other agencies routinely used social media to try
2 to get insights about what might be coming, and so it didn't seem strange to me that he
3 was citing that as a source for their estimate of the crowd size.

4 Q Now, the next line says, "Thus far, solely pro-Trump protesters planning to
5 come in. No intel regarding counter-protesters."

6 A Yes.

7 Q And do you remember who said that on the call?

8 A Mike Sherwin.

9 Q And why was it significant that there was pro-Trump protesters coming and
10 not --

11 A One of the --

12 Q Go ahead.

13 A One of the main concerns we had was that you were going to have
14 thousands of pro-Trump protesters come to the city and thousands of anti-Trump
15 protesters come to the city and that we would have clashes in the streets of Washington
16 between these two groups.

17 So, as we got closer to the 6th, the intelligence seemed to indicate that the
18 anti-Trump groups were not going to show up, which, to some extent, was a relief to us,
19 because it minimized the potential for conflict between those two groups.

20 We had seen conflict between those groups in the past. There was a murder in
21 Portland at the end of August, where a pro-Trump protester was shot by an anti-Trump,
22 ANTIFA-aligned individual. We knew that there was potential for violence, and our
23 biggest concern, early on, was that we were going to have these two groups clash in the
24 streets and that we'd have this, sort of, chaotic scene all over the city.

25 Q So, in the sense of not having those counter-protesters, there was an

1 anticipation that there would be not that type of violence. Is that fair to say?

2 A Yes, that's right. That was some relief to hear that it would be essentially
3 be a one-sided protest, because it lessens the potential for violence.

4 Q In hindsight, do you believe that played out to be accurate?

5 A Generally, yes. Because, as difficult and as ugly as January 6th was at the
6 Capitol, we didn't have people getting murdered all over D.C. on that day. And, again, if
7 you look at what happened in Portland, the assailant there simply walked up to that
8 individual and shot him point-blank for no reason other than he had a political difference
9 with him.

10 Q Now, it also states that "MS," meaning Michael Sherwin -- that's your
11 notes -- "will send email updates on Friday describing details, and planning on sending
12 daily emails."

13 How involved was Michael Sherwin in the preparation for January 6th?

14 A He was very involved. He ran the D.C. U.S. Attorney's Office. They work
15 in close conjunction with the Metro PD, Capitol Police, and other law enforcement
16 agencies that are specific to D.C. Every arrest that's made in D.C. ultimately gets
17 processed through his office, so they had a good working relationship.

18 If there were arrests that arose from this, as we knew there may well be, they
19 would've been processed through his office. He had AUSAs sitting at the various
20 command posts.

21 And so, yes, he was very much involved in this. And the DAG and I both were
22 relying, to some extent, on what he was reporting to us about what to expect.

23 Q After this meeting, what steps, if any, did you and Mr. Rosen take in terms of
24 preparing DOJ's components for January 6th?

25 A So, around this time, the Acting AG decided that, even though we'd not

1 received any requests, he wanted to make sure that we had every available asset in or
2 near D.C. in case the situation got out of control in the city on January 6th.

3 So, pursuant to that, I called each of the heads of the five law enforcement
4 agencies within DOJ, and I spoke to them and said, "The Acting AG wants to know what
5 kind of resources you can offer up in terms of tactical teams who we can bring to D.C. to
6 be here in case one of our partners needs reserves."

7 And, pursuant to that, each of those agencies sent special operations teams to
8 Washington in advance of January 6th. We had them prepositioned in or outside the
9 Capitol for that day. And, ultimately, when the Capitol Police asked for assistance that
10 afternoon, we were able to deploy them fairly quickly to get them to the Capitol.

11 You have to keep in mind that these are special tactical teams. It's things like the
12 FBI SWAT Team or the FBI Hostage Rescue Team or the Marshals Special Operations
13 Group. These are not street cops. We don't have street police officers in the Justice
14 Department. We're not in a position to do street policing.

15 But we told our partners that we would have reserves, and if anyone had a
16 problem or got overwhelmed or needed assistance, they just needed to reach out to us
17 and we would deploy those units to help them out.

18 Q Can you tell us which five components you reached out to?

19 A So, within DOJ, you have the FBI, ATF, DEA, U.S. Marshals Service, and
20 Bureau of Prisons. Those are our five law enforcement agencies.

21 Each one of them provided specialized times. So FBI had their SWAT teams and
22 their HRT teams, as well as bomb teams. ATF had their special operators. The
23 Marshals had the special operations groups that I mentioned earlier. BOP sent what
24 they call their SORT; I think it's Special Operations Response Teams. They sent those to
25 D.C.

1 And then DEA was assigned to be, sort of, like, 24 hours behind. They had
2 special operations teams, but we wanted them to be slightly in reserve, so that if we had
3 deploy everyone on day one, we had fresh officers to step in on day two. So DEA was
4 on, like, a 24-hour lag behind everyone else.

5 But they all had a significant number of special operators designated to support
6 whatever was going to happen on January 6th.

7 Q I want to draw your attention to exhibit 31, which is a memo from the
8 Bureau of Prisons to obtain the Deputy Attorney General's approval or disapproval
9 essentially for staffing for January 6th.

10 A Yes, I see it.

11 Q Would you or anyone in senior leadership at DOJ have received this from the
12 other components? In other words, would there be paperwork to reflect the staffing
13 and resources that were provided by DOJ's components for January 6th?

14 A Not for all of them, because it is driven by their statutory authority. So
15 BOP, since they are generally limited to BOP institutions, they would not have general
16 Title 18 authority to, like, make street arrests, so they had to be deputized to perform
17 those functions. An FBI agent, who has inherently Title 18 authority because of their
18 position, would not need a deputization. So there were some that needed it, some that
19 did not.

20 These BOP operators were brought into Washington specifically to protect the
21 DOJ headquarters, because we wanted to make sure that we did not draw resources
22 away from any other law enforcement agency to protect our own building. Obviously,
23 the Department was a potential target as well, because a lot of people were very upset
24 with the Department and of the view that the Department hasn't done what it should do
25 with regard to the election.

1 Q And the calls -- well, how did you communicate AG Rosen's desire to have
2 these components called upon? Was that in an email or a phone call?

3 A I called each of the five agency leads separately. I know them all. We all
4 work well together. I said, this is what the AG wants. And they all said, fine, no
5 problem. And they either told me on the spot what they would be sending or they got
6 back to me in very short order and said, this is what we can send.

7 Q And the timeframe for this is -- when do you think those calls were made?

8 A I would say someplace after December 28th, so it's maybe the 28th, 29th,
9 30th, somewhere in there. It's in advance of December 6th, certainly. We had move
10 people from around the country, we had to move their equipment. So you need a
11 couple of days to move all these people and their equipment to D.C.

12 Mr. Andres. In advance to January 6th. You said December 6th.

13 Mr. Donoghue. Oh, I'm sorry. I misspoke and said December 6th.

14 Thank you.

15 BY [REDACTED]:

16 Q Exhibits 32 and 33 is some of the intelligence received by the Washington
17 Field Office. And I know you said you've reviewed this prior to today, but exhibit 32, for
18 the record, is pages from Atlantic Council's Digital Forensic Research unit, which includes
19 tweets and pictures about January 6th; as well as, exhibit 33 is an email to WFO about
20 thedonald.win blog citing essentially potential violence, as well as a blog received from
21 the Anti-Defamation League.

22 Now, all of this information was sent to WFO. Were you aware of any of this
23 specific intelligence, that outside resources were being sent to the Bureau?

24 A No. I never saw any of these until recently in preparation for these
25 interviews.

1 Q At the time, at the end of December, do you believe that you, senior
2 leadership at DOJ, as well as FBI, had an accurate threat assessment going into January
3 6th?

4 A I think that we all understood the danger that was posed. I think we all
5 understood that there were certain possible targets and that the potential for violence
6 was very real. So I think we had a good understanding of what could happen.
7 Obviously, what did happen was, in some sense, a worst-case scenario, but I thought we
8 had a good understanding of the threat as we went into this.

9 And I thought we had good coordination across the agencies, such that the
10 agencies that had specific areas of responsibility, such as the Capitol and the Capitol
11 Police, were responsible for those areas, and we were confident they could handle it, and
12 everyone was confident that everyone else would be ready, willing, and able to provide
13 assistance if that was needed.

14 Q Well, let's skip ahead to January 3rd. And you spoke about this a little bit in
15 the prior section, about a call with DOD in preparation for January 6th.

16 I'm going to turn to exhibit 34, which is your handwritten notes --

17 A Yes.

18 Q -- from that call. Could you describe who was on that call and what the
19 purpose was?

20 A The call was the afternoon of Sunday, January 3rd. It was DOD, DOJ,
21 Interior, DHS, and the National Security Advisor, at least. I indicated in the
22 parentheses there who some of the participants were. There may have been some
23 others that I just didn't capture there.

24 And we basically discussed what we were doing to respond to the potential threat,
25 who had what resources, what were the likely target areas, did everyone understand

1 what everyone else's responsibility was, did everyone understand what the agencies, sort
2 of, to their left and right were doing.

3 And so we had sort of a discussion around the virtual table as to what we were
4 doing to prepare for the 6th and to offer assistance to each other as needed.

5 Q Did DOD arrange this call and lead the call?

6 A I think they scheduled the call. I don't know that it was really led per se by
7 anyone or any agency. But I remember DOD spoke first, and then we kind of went
8 around the table saying, well, this is what DOJ's got, you know, we have X number of
9 special operators, we have them in or near the city, if anyone needs help, just speak
10 up -- that kind of thing.

11 Park Police belong to Interior, so Interior talked about what the posture was of the
12 Park Police. DHS talked about Federal Protective Service and how they were covering,
13 you know, two or three dozen buildings within the city, and so on. So everyone kind of
14 went around and talked about what they were doing to prepare for the 6th.

15 Q And who spoke on behalf of DOD?

16 A The Acting AG.

17 Q I'm sorry, on behalf of the Department of Defense, who do you remember
18 speaking on that?

19 A Oh, I'm sorry, DOD. I thought you said DOJ.

20 Q That's okay.

21 A General Milley spoke at the outset. Acting Secretary Miller also spoke.
22 There may have been others, but I specifically remember General Milley and Secretary
23 Miller talking.

24 Q Did you have any conversations with the chief of staff for Mr. Miller, Kash
25 Patel, at that time or any time?

1 A I don't know if he was on this call. I did have conversations with Kash Patel
2 separately, in part in relation to that Italy allegation that was discussed a few hours ago.

3 Q Can you describe those conversations?

4 A And let me just clarify. The Italy conversation, I believe, you had on December
5 30th, the request to investigate the claims of the Italy -- I don't even know how to
6 describe it, but --

7 A Yeah.

8 Q And was Mr. Patel at DOD at that time, end of December?

9 A I believe he was, because I think that the chief of staff brought that up first in
10 his office on December 29th. And, as part of that conversation, he referred it to us, he
11 said, check it out.

12 A I think at some point he said, you know, "Maybe you could have FBI agents go
13 over there and just interview this guy." And we said, "No, no, it doesn't work that way.
14 We can't just put FBI agents on a plane and send them to a foreign country and have
15 them interview people. You have to go through the MLAT procedure. It'll take
16 months," and so on and so forth.

17 A And someone said, "Well, DOD's got people on the ground. Maybe they could
18 do it." And we didn't really weigh in on that. It was kind of like, that's a DOD issue. If
19 you want to talk to them, so be it.

20 A And I think I ended up on the phone with Kash Patel a couple days later, maybe
21 January 1st. He called me and said, "What is this situation with the guy in Italy?" And I
22 told him what I knew, and he said, "Okay, thanks." And we hung up, and that was it.
23 I've never met him in person. I think that was the only conversation we had on the
24 phone.

25 Q Was there --

1 A And I don't think DOD did anything with that. I think it was just -- they took
2 it under advisement.

3 Q So let me just understand. So he called you to see if DOJ was following up
4 on the Italy claim?

5 A No, I think --

6 Q Or offering --

7 A I think somehow that had worked its way back to DOD. I don't know how.
8 And Kash Patel called me and said, "I heard you were given some information by the chief
9 of staff about this Italy thing. Can you tell me what this is all about?" And I relayed to
10 him what I knew at that point, which was: Chief of staff told us this. I googled the guy.
11 This is what I learned. It really doesn't seem like there's anything to this, but that's up to
12 you guys. And he said, "Oh. Okay, I get it. Thanks." And that was it.

13 Q Okay.

14 Who was your primary DOD contact? Meaning, on your level, to what level did
15 you reach out to anyone over at DOD?

16 A With regard to this, I wasn't really in contact with anyone. I had dealt with
17 the DOD General Counsel and some other people at DOD on different matters that
18 involved the Department and DOD.

19 But with regard to January 6th preparation, we had this call on the 3rd; we had
20 another call on the 4th. On both of those, General Milley was on the call, the Acting
21 Secretary was on the call. They also ended up on calls on the 6th when I was at the
22 Capitol. So we had some communication at that level.

23 Q Back to your notes for that day, it states towards the end, "DOD asked for
24 civilian lead for ops in D.C."

25 A Yes.

1 Q Asked if -- sorry, I think have it right -- asked if DOJ is willing to do that as
2 they did in Lafayette Square.

3 Let me just ask you first, when DOD asked if you were -- for the civilian lead for
4 ops in D.C., what did you understand that to mean?

5 A General Milley brought this up, and it was very clear that he did not want
6 any asset of the military involved at all in this, if possible. And that was fine. We were
7 all in agreement with that. You know, we was very adamant about, the last thing this
8 country needs is to have Active Duty troops on the streets of our capital. And we all
9 agreed with that, so that wasn't much of a discussion.

10 National Guard is a little different because National Guard can provide backup to
11 local law enforcement. So there's a distinction there. But we were all in agreement
12 with General Milley.

13 And he said something to the effect of, "Can we get a civilian agency to take the
14 lead on this? And, DOJ, can you do that? Can you be the lead, take the lead role in
15 coordinating all this stuff?"

16 And DAG Rosen answered, "No. We are not prepared to do that at this time."
17 And we had already had a call set up for the next day, the 4th. So he said, "I can give
18 you more detail later and explain why, but we're not going to do that."

19 And the reason was that we had no authority over many of these components,
20 nor could we have authority over those components. So DOJ had no authority over the
21 Park Police, who belong to Interior. We had no authority over FPS, who belong to DHS.
22 And that's even within the executive branch. We certainly had no authority over the
23 Capitol Police, who reported up to the legislature. We had no authority over Metro
24 P.D., who reported up to the city officials in D.C.

25 So the problem was, you have this fractured authority and jurisdiction in D.C. so

1 that no one, no one agency, could be in charge of the operation.

2 I understood from General Milley's perspective why he wanted that, because,
3 within the military operation, you always have unity of command. There's always one
4 person in charge, and everyone falls in line behind that one commander. The problem
5 was, given how fractured the political and legal authority was in D.C., there was no way to
6 place one agency on top of everyone else.

7 And so what we had to do was coordinate closely and know what everyone else
8 was doing and trying to do and who had what responsibilities.

9 Q It appears from the question, as you have it written, though, that DOD
10 believed that DOJ did take on that authority as the lead for the summer. Is that fair to
11 say?

12 A I don't know what he meant by "as it did back at Lafayette Square," and I
13 didn't ask. I wasn't there when Lafayette Square happened. I was still in New York.
14 So I don't know what General Milley's perception was of what was going on at Lafayette
15 Square.

16 But I didn't chime in and prolong the call. It was just, he made the request, the
17 DAG answered very quickly, "No, we're not going to do that, I'll explain more why later,"
18 and we moved on.

19 Q Was there a reaction from General Milley at that point when Mr. Rosen said,
20 no, it would not take on the lead?

21 A No.

22 Q Okay. So, later -- is there anything you want to add about that call that you
23 had on January 3rd?

24 A No. Just, as you can see from the notes, we discussed the, sort of, key
25 locations -- the Capitol, Lafayette Square, Washington Monument, Freedom Plaza.

1 We talked about who had responsibility for which of those key areas. So, for
2 instance, the Park Police had the monuments. Capitol Police had the Capitol. FPS had
3 the various Federal buildings. We had DOJ. MPD had the city overall for all the areas
4 that were not covered by someone else. So everyone had their own area of
5 responsibility that they were going to take care of.

6 Q And would there have been a benefit to put one person in charge of all these
7 different agencies who were involved in protecting, securing --

8 A There might've been, but keep in mind, you've got three branches of
9 government -- I didn't even get into the Supreme Court Police here, but they exist too,
10 right? And they report up to the Supreme Court.

11 So who's going to give up their power? Is the mayor of D.C. going to give her
12 power to the executive branch and surrender control of MPD to the executive branch?
13 Probably not. Is the executive branch going to surrender its power to the legislature
14 because the Capitol Police should be running everything? Probably not.

15 This is a paradigm that had been used over and over many times and that had
16 worked and that was successful because the agencies had expertise in covering their own
17 areas. No one was better equipped to protect the Capitol than the Capitol Police, so it
18 made perfect sense to leave that to them and to simply tell them, if you need assistance,
19 let us know and we'll provide it.

20 So it wasn't as if anyone was looking at this, saying, "Wow, this is broken. We
21 need one agency in charge." And even if we had drawn that conclusion, who would that
22 agency have been?

23 So, again, it's a very unusual situation in D.C., where you have three branches of
24 Federal Government, all of which have their own authorities and their own law
25 enforcement agencies. And then you have the local D.C. authorities, like the mayor and

1 the city council, exercising authority independent from the main Federal Government.

2 Q So I want to jump ahead to that evening. You spoke at length about that
3 January 3rd 6:00 p.m. meeting at the White House.

4 According to the Army official timeline, Secretary Miller and Milley have just met
5 with President Trump. In fact, you said you saw General Milley that evening.

6 A Yes.

7 Q Did former President Trump mention the activation of the D.C. National
8 Guard at any time during the White House meeting that you were present at, or was it
9 solely about election matters?

10 A No, it was solely about the change in leadership at the Department, or the
11 potential change in leadership. Nothing about January 6th was discussed in the Oval
12 Office when I was there.

13 Q Now, according to Secretary McCarthy, after that meeting that General
14 Milley had on the 3rd, the White House designated DOJ as the lead Federal agency.
15 Was this designation mentioned to you at all by anyone from the White House?

16 A No. At no time prior to January 6th did I or, to my knowledge, anyone else
17 at DOJ receive information that we had been designated as a lead Federal agency.

18 And more so, when we had the conversation on the 4th with General Milley and
19 Secretary Miller and Secretary McCarthy and we told them we would not be the lead
20 Federal agency, no one came back and said, "But the White House has already designated
21 you as such." So it doesn't make any sense.

22 Q Before --

23 Mr. Andres. Which isn't to say that on January 6th you were the lead Federal
24 agency either.

25 Mr. Donoghue. Right. Exactly. I mean, things change on January 6th and we

1 can get to that. But I don't think at any point we were designated by anyone to be the
2 lead Federal agency.

3 [REDACTED] Before we move on to January 4th, are there any questions up
4 until this point?

5 I should note that Mr. Schiff was in the room for about 20 minutes and has since
6 left.

7 Ms. Cheney, do you have any questions?

8 Ms. Cheney. I don't. Thanks, [REDACTED]

9 BY [REDACTED]:

10 Q So, starting with January 4th, you noted earlier that you have a 9:30 a.m.
11 briefing with the FBI every Tuesday or Wednesday, I think you said?

12 A It's Monday and Wednesday. Yes.

13 Q Monday. Was anything addressed at that January 4th meeting about
14 January 6th, about the security preparations going in?

15 A Yes. We discussed it on the 4th. We discussed it on the 6th. We had
16 discussed it the prior week too. It was just becoming more prevalent in the morning
17 conversation as we got toward the 6th.

18 Q So I want to move to -- exhibit 35 is an email at 12:21 on Monday, January
19 4th, to yourself, as well as Michael Sherwin and John Moran. And it is essentially an
20 overview of the U.S. Government posture going into January 6th sent by Acting Chief of
21 the Counterterrorism Section [REDACTED].

22 A Yes.

23 Q So, on the third page -- on the fourth page, I believe, where it has "DOJ-FBI,"
24 it says, "FBI operations relative to the potential unrest will be conducted out of their
25 Washington, D.C. Field Office. There are no current plans to activate the national SIOC."

1 That's at 12:21.

2 A Yes, I see that report.

3 Q Okay.

4 It also, in this email, estimates the crowd to be around 28,000 people to be
5 expected. And that's the top of the second page.

6 A Okay.

7 Q Now, I want to --

8 A My understanding --

9 Q Go ahead.

10 A Just so you understand, the range that we heard throughout this week
11 leading up to it was somewhere between below 10,000, up to 30,000. That was sort of
12 the range of what we were hearing.

13 And that was based on a number of different metrics, one of which was the
14 number of permits that had been issued. We have nothing to do with the permitting
15 process in D.C., but we understand that they apply for a permit; in submitting the permit
16 application, they estimate how many people will show up. So that's one metric you can
17 use. Others were based on social media, as well as the hotel reservations and things of
18 that nature.

19 So we were getting this sort of sliding scale of less than 10,000, up to 30,000,
20 throughout the week. And that's a relatively small turnout for a Washington, D.C.,
21 event. So, again, that sort of gave us some comfort, too, thinking that this was not
22 100,000 people we were going to be looking at.

23 Q Got it.

24 Now, exhibit 36 is a 2:02 email from [REDACTED] specific to January 6th reporting.

25 And in --

1 A All right.

2 Q -- the middle of the page there, it goes through some information received
3 from the SITE Intelligence Group, which is an American NGO that tracks jihadists and
4 White supremacist activity.

5 We'll go through some of what Mr. [REDACTED] flagged for you. But is it typical for DOJ
6 or the Counterterrorism Section to rely on an outside group to provide that type of threat
7 information?

8 A I don't know if it's typical. You'd have to ask the FBI about that. They can
9 give you more insight.

10 But I know there are NGO groups out there, some of which are actually
11 good -- many of which are very good, that track this sort of information and they submit
12 it. I think the government can accept the information. Obviously, you have to take it
13 for what it's worth. It might be reliable, it might not. But since intelligence is always a
14 mosaic, you don't ever turn anything away. You may or may not give it weight, but you
15 take in everything that you can to give yourself the best possible picture.

16 Q I'd just note the details of what this NGO is providing, such as: online
17 forum threatening attacks on Democrat and Republican politicians. There's a call to
18 occupy Federal buildings. There's mention of invading the Capitol Building. And
19 there's, the last bullet there, online comments hoping for a civil war and a, quote, "'shot
20 heard around the world,' in a reference to the beginnings of the American Revolution."

21 Do you know if --

22 A Yes, this --

23 Q Did this information have any impact on the Bureau or DOJ's preparations?

24 A It certainly caused concern, but we had had concern even before this email
25 and before this reporting. So this is why the Acting AG wanted to move as many

1 resources as we could into D.C.

2 So I think, for us, it just confirmed that we weren't overreacting, that, by bringing
3 these units to D.C., we were acting appropriately in an abundance of caution to make
4 sure that we had all available resources to address any threats that might arise that day.

5 Q Would this information received from the NGO, before it's provided to
6 yourself, would it be confirmed by the FBI?

7 A I don't know that. Again, most of our reporting was coming from the FBI,
8 so I put a lot more weight on what the FBI is telling us than anything from any other
9 source. And, up till the day of the 6th, FBI was reporting that there were no credible
10 threats against the identified targets.

11 Q So, just so I'm clear in terms of how information is flowing to you, this email
12 from [REDACTED], is it clear that it's not FBI information?

13 A Oh, yeah, that's clear. I mean, he says right at the outset of that paragraph,
14 "The SITE Intelligence Group, which is an American NGO," and then he indicates that
15 that's where this is coming from. Doesn't mean it's wrong.

16 Q Got it.

17 A Right. But the FBI is what we rely on primarily.

18 Q Understood.

19 I want to move ahead to that day about 2 hours later. At 4 o'clock, you have
20 another call with Michael Sherwin, which is at the bottom of exhibit 30, the notes from
21 that call.

22 A Yes.

23 Q So, now, on this call, it appears to be yourself, [REDACTED], Mr. Rosen -- is --

24 A Yes.

25 Q -- and yourself, correct?

1 A Right.

2 Q Now, at this time, it states, the second line there, "FBI will stand up SIOC."

3 A That's --

4 Q So I'm wondering if you can explain, at 12:21, there was no current plan to
5 set up a SIOC, and then at 4 o'clock, it appears there is a decision to set up the SIOC.
6 What, if anything, had changed?

7 A I don't know if it changed specifically in that window, because that's a DHS
8 report that you're referencing, so there's probably a little bit of a time lag on their
9 information.

10 But, initially, the FBI did not intend to stand up the SIOC. They felt that this was,
11 as far as D.C. was concerned, a single city event and that we already had two command
12 posts in the city, maybe three depending on how you look at it, and that there was not
13 going to be a need to stand up the SIOC.

14 However, again, in an abundance of caution, Acting AG Rosen said, "You know
15 what? Talk to Dave," meaning Dave Bowdich. "I really think we should be standing up
16 the SIOC. Talk to Dave about that."

17 And I did. And I emphasized for him the AG's concern. We wanted to make
18 sure that we did everything, even if we were acting in an abundance of caution. And he
19 said, "Fine, we'll stand up the SIOC then."

20 So the decision was made to stand up the SIOC either on the 4th or prior to that,
21 but we did stand up the SIOC before January 6th.

22 Q It looks like exhibit 37 reflects Mr. Bowdich's directions of setting up the
23 SIOC. That's Monday, January 4th, at 9:19 p.m. Is that right?

24 A Yes. Yeah. So the email went out that night, and the SIOC was
25 operational the next day, Tuesday, the 5th.

1 Q Just generally speaking, what is the purpose of a SIOC, and when are they
2 usually set up?

3 A FBI could give you a better idea of the criteria they were using. But a SIOC
4 is a command center. So you have the advantage of having everyone sit in one room,
5 whether it's DOD, DHS, Park Police, whatever it is. Everyone's in one room together, so
6 you can do real-time coordination.

7 So that's the advantage. The disadvantage is that it takes time for information to
8 filter up to these command centers.

9 And so it was certainly helpful to have them all across the street at the FBI, in the
10 headquarters, sitting in one room, working together. And so the AG thought it would be
11 helpful, and I think he was right about that.

12 We did have --

13 Q Was there --

14 A -- several other command centers that were already planned and that
15 became operational. So there was a command center at the Washington Field Office of
16 the FBI.

17 There was also a command center at the Metro P.D. headquarters, which they call
18 the JOC, J-O-C, Joint Operations Center. That was mostly virtual, but there were some
19 people physically there.

20 The Washington Field Office was like a mini version of the JOC. It had -- I'm
21 sorry -- a mini version of the SIOC, S-I-O-C, and it had a lot of different components
22 represented in one room there.

23 And then DHS had their own command center, which was called the National
24 Operations Center, the N-O-C, and you'll see that in some of the communications as well.

25 Q How were all of these different command centers communicating with each

1 other, if you know?

2 A The people who worked it would be able to give you better insights to that.
3 But there was a lot of overlap, for sure. But things generally filtered up from the
4 Washington Field Office command post up to the SIOC. For our purposes, that was the
5 most important thing for us within DOJ. But we had people staffed across the different
6 centers so that everyone knew what everyone else was doing or trying to do.

7 Q And just so I'm clear, there's the FBI headquarters SIOC as well as the WFO
8 SIOC?

9 A Right.

10 And, just to be clear in the nomenclature, so the SIOC, the Strategic Information
11 Operations Center, that's solely at the FBI headquarters on Pennsylvania Avenue.

12 In their Washington Field Office, which is only a few blocks away, you had what
13 we were calling the command post. And then, in the Metro P.D. headquarters, which is
14 a few blocks away, you had the JOC, the Joint Operations Center.

15 Q Do you know if a SIOC was set up for the Million MAGA March in November
16 or the one in December?

1

2 [3:46 p.m.]

3 Mr. Donoghue. I don't specifically recall. I don't think so. But I know the SIOC
4 was operational at some point over the summer when there was unrest in D.C.

5

BY [REDACTED]

6 Q I want to move on to the 5 o'clock call with DOD, and your notes on that call
7 is exhibit 38.

8 A Okay. I have it.

9 Q So again on this call, it's DHS, DOJ, NSC. Do you remember who, in
10 particular, attended from those agencies?

11 A From DOD, I do recall General Milley being on and Secretary Miller. I don't
12 recall specifically who was there from the other components, or who else might have
13 been there from DOD.

14 Q You have a note in about the fourth or fifth line. It states RMVE and Antifa.
15 Do you remember what prompted you to take those two notes down?

16 A Not specifically. Obviously, these were mentioned. It's RMVE, Racially
17 Motivated Violent Extremists, and Antifa.

18 We were at this point still very concerned that we were going to have large groups
19 of political factions that were in opposition to each other.

20 So getting back to our original concern that we were going to have sort of street
21 brawls and violence across D.C., that was still there. Even though, the intelligence was
22 telling us that it was less likely, we were still very much concerned that we were going to
23 have city-wide violence with political factions who oppose one another.

24 So I think that's probably a reference to, on the one hand, you're going to have
25 potentially RMVEs, on the other hand, you're going to have these Antifa guys, and they're

1 all going to start shooting at each other all across D.C.

2 Q Do you know who mentioned RMVE or Antifa?

3 A I think it was the DOD guys. I don't think that was us. I think that
4 came -- we spoke later in the conversation.

5 Q Well, midway down the page, it says "4 buckets." Can you just talk us
6 through that note?

7 A So you recall that the night before when General Milley asked for DOJ to
8 serve as the lead agency, the DAG said we could not do that for a variety of reasons that
9 we would explain later.

10 The next day we discussed this issue in more detail with Dave Bowdich. And
11 Dave had been using this sort of paradigm to explain how the FBI was viewing this thing,
12 and we thought it was helpful. He said, if you break it down to four buckets, you have
13 intelligence, command posts, investigations, and street operations.

14 So this is the DAG explaining to DOD, and others on the call, what we as the
15 Department were able to do. He said, with regard to intelligence, we're already doing
16 that. The FBI is disseminating intelligence, others are as well, DHS, et cetera. But we
17 are already doing that, and the FBI has an established mechanism through which it
18 disseminates intelligence to State and local law enforcement officers. We'll continue to
19 do that.

20 With regard to command posts, we're doing that as well. We are standing up
21 with SIOC. Everyone is invited to be there. We have a command post at WFO, and
22 we're staffing other command posts that are being hosted by other agencies. So that's
23 also functioning.

24 With regard to investigations, which really means investigations and prosecutions,
25 we, DOJ, of course, have the lay on that because we're the only ones who can prosecute.

1 So in terms of any criminal investigations that might arise from whatever happens
2 on the 6th, we would conduct those criminal investigations and the prosecutions.

3 The last bucket is street operations. And the DAG was very clear on this: We
4 do not do street operations. We do not have police officers to man the streets of
5 Washington, D.C. That's the Metro Police.

6 With regard to the specific facilities, like the Capitol, that's the Capitol Police. At
7 the monuments, it's the Park Police.

8 We can provide reserves. If someone has a real problem, tell us, and we'll throw
9 a few hundred FBI and ATF agents at it. But we cannot man the streets of D.C. as a
10 regular police force, because that's not what we're trained and equipped to do.

11 So he is very clear that in terms of street operations, and whatever might happen
12 on the streets of D.C., we were happy to play a supporting role, but we would not be
13 taking a lead role in any of that.

14 And he explained that in, I thought, pretty clear terms to the people who were on
15 the call, and then we moved on.

16 Q And were the people on the call, particularly DOD, satisfied that DOJ would
17 be taking, as you wrote down, "We can take the lead on all of these," meaning the four
18 buckets that you just described?

19 A The first three, right, that we would -- DOJ would have a leading role for
20 that, but that we would not have any leading role for street operations. Yes, everyone
21 understood that and seemed satisfied with it.

22 Q At the bottom half of this, of your handwritten notes, where it says
23 "summer," and then it has a breakdown of all of the different components. Can you
24 explain to us who provided that information and what it means there?

25 A That was General Milley.

1 So after the DAG explained what our view was of our role, General Milley began
2 again reiterating that no one should want Active Duty troops used except as a last resort.
3 And, again, we were all in agreement with that. And we began --

4 Q Was this after you all agreed that you would take on the, you know, the intel
5 command posts until -- that aspect of it, this was brought up again by General Milley?

6 A Yes. He went back to reiterate what he had started the conversation with
7 the day before: No one should want Active Duty troops on the streets of our Capitol.
8 Which we all agreed to.

9 But then he began reciting those numbers: You know, by my count, Park Police
10 has 500, Secret Service has 160, the Capitol Police have 600, and so on.

11 I don't know where they got these numbers. No one questioned them. There
12 was no need to. It really wasn't relevant to the conversation.

13 But he was saying: So by my count, there were thousands of civilian law
14 enforcement officers available to protect Washington, D.C., we are providing National
15 Guard, and with all of those resources, there should be no reason to have Active Duty
16 troops on the streets.

17 We all agreed. No one was in opposition to that. So we moved on.

18 Q On the right-hand side of your notes, where it says, "There should be plenty
19 of police forces available without using federal military troops," is that what General
20 Milley said?

21 A Yes.

22 Q To your recollection?

23 A Yes.

24 Q And the last line there says, "Do we need a," I believe it says, "a police
25 department QRF"?

1 A Yes. At that point we were just kind of wrapping up the call, saying, okay,
2 does anyone else think we need anything else? Is there something we're missing? Are
3 there any holes? And so on.

4 And people were just sort of chiming in. We were spitballing at this point. Do
5 the police departments need a QRF, a quick reaction force? And then some chimed in
6 and said, no, they all have QRFs, of course they do. This is not some small county police
7 department. It's the Metro PD. It's the Capitol Police. They know what they're
8 doing.

9 And so he said, no, of course, no, they've got that covered.

10 What about rules of engagement?

11 No, these are professional law enforcement officers. They know what they can
12 engage and how. And all that sort of stuff.

13 So at that point we were just kind of throwing out ideas to see if we had missed
14 anything.

15 Q Did anyone address the need for an integrated security plan?

16 A No. No one used that term. I think that -- I don't know exactly what the
17 definition of that would mean from one agency to another.

18 But it was clear that everyone understood what everyone else's responsibility was,
19 and everyone understood what was available to them if they needed more resources to
20 meet their responsibilities.

21 Q And during that call, did anyone, whether DOD or otherwise, bring up any
22 potential for Proud Boys to be attending or the Boogaloo Boys, or raise any concerns
23 about particular groups who may be attending that?

24 A I don't remember Proud Boys or Boogaloo Boys specifically being mentioned.
25 I think we just talked more generally about left-wing, right wing, or Pro-Trump,

1 anti-Trump groups coming to the Capitol. It didn't really matter what they called
2 themselves. It was a matter of they're upset, they're coming to the Capitol, and there's
3 a potential for violence.

4 Q All right. The January 4th call was the last coordination call before
5 January 6th. Is that right?

6 A Yes, that's right.

7 Q And is it fair to say at the end of that call people felt prepared as they
8 entered January 6th, in terms of the agency response?

9 A Yes. I think that's right. Like I said, everyone knew what everyone else
10 was doing. We had not just created the wheel here. This had been done in many
11 times in D.C. The Park Police knew their responsibilities. The Secret Service knew their
12 responsibilities. The Capitol Police knew their responsibilities. MPD. FPS.

13 Everyone knew what everyone else was doing. Everyone knew that there was a
14 danger of violence. Everyone knew that the Capitol and other facilities were potential
15 targets. And I think we all felt comfortable that we were aware what the situation was,
16 and we had the resources in place to address it.

17 I do remember now, as I'm looking at these notes, Dave Bowdich was in the DAG's
18 office for this call. So Dave and I and the DAG were in that same office. There might
19 have been some other people representing DOJ.

20 But, you know, when we hung up the phone, we sat around talking about it, again,
21 amongst ourselves. Do we have everything in place? Have all the SWAT teams and HR
22 teams been moved, or are they at least en route? That sort of thing to make sure that
23 we had everything available.

24 Q Did anyone from DOJ on your side or within the Bureau have any contact
25 with anyone from Capitol Police about their preparations?

1 A I know Mike Sherwin did. And I can't speak for the other agencies. You'd
2 have to ask them directly.

3 Q Do you know who Mike Sherwin was in touch with specifically from Capitol
4 Police?

5 A I don't. I don't know if he was talking to Chief Sund. I don't know if Dave
6 Bowdich was talking to Chief Sund. I spoke to Chief Sund on the 6th, but I did not speak
7 to him before that. I know that they were sitting at the same command centers
8 together, and things of that sort.

9 Q Before we wrap up January 4th, let me just go through this email that
10 evening, exhibit 39. This would be the acting AG, Mr. Rosen, approved the Secretary of
11 the Army's plan to approve D.C. National Guard in support of Mayor Bowser's request.

12 Are you familiar with that?

13 A Right. I am. I'm familiar with the process because, unlike a governor, the
14 Mayor of D.C. doesn't have the authority to call out the National Guard. That authority
15 is with the President. The President has delegated that authority to the Secretary of
16 Defense.

17 So when the D.C. Mayor wants to use the National Guard, they put in a request.
18 It goes up the DOD chain of command. DOD asks DOJ about the legality of it.

19 And this is clearly a situation where it's perfectly legal to use the D.C. National
20 Guard to back up local law enforcement. So they just formalized that with an opinion
21 that says, yes, it's legal to use D.C. National Guard in this way.

22 It's not approving a plan or not, or anything like. It's simply saying, as a legal
23 matter, you can use the Guard this way.

24 Q In other words, DOJ didn't review any of the requests the Mayor had
25 concerning the D.C. National Guard?

1 A No. We understood, as part of these conversations on the 3rd and the 4th
2 that the Mayor had requested 350 National Guard, that she wanted them to be unarmed
3 and to have no body armor, and that she wanted them positioned at Metro centers and
4 traffic intersections and things like that to free up Metro PD to have more bodies to
5 address other things. And that was fine.

6 Q And that was memorialized in the January 12th letter there, that's exhibit 40.
7 Is that right?

8 A Right.

9 Q DOJ's stating it was appropriate for the D.C. National Guard to respond. Do
10 you have that?

11 A Yeah.

12 Q Okay. Going now to January 4th, exhibit 41 is essentially a suggested press
13 release for DOJ.

14 Now, it's my understanding that, in searching DOJ's website, the statement was
15 never issued. Do you know why not?

16 A I don't know if it was issued.

17 Q Okay.

18 A I just don't know.

19 Q In the draft release, or draft press, you state at some point that we
20 anticipate the protests to be peaceful.

21 Now, at that point you already knew there could be the potential for violence, as
22 you described. Could you just explain the words that you use there for the press
23 release?

24 A Well, we certainly expected American citizens coming to the Capitol to
25 conduct themselves lawfully. So we did expect them to be peaceful. That said, we

1 prepared for something that was not peaceful.

2 I think the purpose of this statement was to try to calm things rather than inflame
3 them. And we wanted to make it clear to people that, if you're going to come to D.C.
4 and protest, that's all fine, and everyone's got a First Amendment right to do that, and
5 that First Amendment right will be protected. But, if people are going to come in and
6 engage in acts of violence and property destruction, there would be consequences.

7 So I think the point of drafting this statement was to make that clear to everyone,
8 that there would be consequences if there was criminal conduct in the Capitol.

9 Q We talked a little about bit about Mayor Bowser's request for the D.C.
10 National Guard. Exhibit 42 is the letter directed to DOJ as well as DOD, essentially, and I
11 am going to quote the last line here.

12 "To be clear, the District of Columbia is not requesting other federal law
13 enforcement personnel and discourages any additional deployment without immediate
14 notification to, and consultation with, MPD if such plans are underway."

15 And this was sent January -- it looks like January 5th at 2:55.

16 Did this impact DOJ's preparation or posture going into the 6th in any manner?

17 A Not really. It made it clear to us that the Mayor didn't want our Federal
18 assistance or involvement. But the reality was we had already prepared.

19 We certainly weren't going to be sending people home. We had our own
20 independent responsibility and authority. And we were going to continue our plans to
21 have our people in reserve in case they were needed by our partner.

22 So it didn't really impact what we were doing.

23 Q So before we start with the events of January 6th, going into that day, did
24 DOJ have points of contacts with Capitol Police, Park Police, MPD, or was it all
25 coordinated through the SIOC?

1 A It was coordinated through the command centers. Sherwin might have had
2 direct contact with Chief Sund or someone like that. I don't recall offhand. But we
3 were relying on the coordination through the command posts.

4 Q Okay. I can start to march through January 6th or if you guys want to take
5 a break.

6 Are there any questions from everybody?

7 Ms. Cheney?

8 Ms. Cheney. No, I don't have anything.

9 Mr. Andres. Sorry. Can we just take 5 minutes?

10 [REDACTED] Sure.

11 Mr. Andres. Okay. Thanks.

12 [Recess.]

13 [REDACTED] Hi. Are we ready?

14 Mr. Andres. Yeah. I think there's somebody other than us that can mute us if
15 they don't like what we're saying.

16 Just kidding.

17 [REDACTED] Is the court reporter on?

18 The Reporter. Yes, ma'am, the reporter is online.

19 [REDACTED] Okay, great. Thank you.

20 BY [REDACTED]

21 Q We're going to start with January 6th. Before we kind of go through the
22 ticktock of your day, I just wanted to start with exhibit 43, which appears to be a situation
23 report from BOP.

24 A Yeah, I see it.

25 Q Were you aware of this report, or had you seen it, on January 6th?

1 A No, the first I saw this report was in the last few days in preparation for the
2 interview.

3 Q And just for the components working this, is this a unit within BOP that is
4 collecting this information, if you know?

5 A I believe so, but I, frankly, don't know much about the intelligence gathering
6 within BOP.

7 Q Okay. So if we could just start then on January 6th, what time you arrived
8 at the office, and kind of go through your day.

9 A So at that point, we had 9 a.m. meetings every morning with the DAG,
10 myself, and some other Department leaders. We had a 9:30 meeting with FBI. I do
11 remember Dave Bowdich being at that meeting. I don't specifically remember Director
12 Wray being there, but he might have been there. We discussed, of course, January 6th.

13 In reviewing these exhibits in preparation for this, it reminded me of something.
14 And I'm not going to go beyond what's in this record that you provided here.

15 But in exhibit 43, on page 4 of that exhibit, there is a summary, an excerpt, I
16 suppose, of a CBS News report that talks about air traffic controllers receiving a threat.
17 Quote, "We are flying a plane to the Capitol on Wednesday. Soleimani will be avenged."

18 That was another matter that we discussed with the FBI that morning, and
19 perhaps prior to that morning. But I had forgotten about that particular issue until I saw
20 this exhibit yesterday.

21 We had a more general discussion with FBI about preparation for January 6th.
22 Were all the teams in place? Yes, they were. I think they were mostly positioned at
23 Quantico. And we talked about a number of other things that were on the
24 Department's radar at that point.

25 After the 9:30 meeting, the FBI personnel left, and I kind of went about my regular

1 day with everything we were dealing with, with election matters and other things.

2 Q Can I just interrupt. Sorry. I have one thing.

3 When you say the people were positioned at Quantico, do you mean the
4 components that were prepositioned for January 6th?

5 A Yes. So I think -- I could be wrong about this, and FBI would have to tell
6 you -- but I think they took the two SWAT teams that we moved to D.C., the two hostage
7 rescue teams that we moved to D.C., and I think they put them both at Quantico. And
8 they had helicopters and the ability to move them into the Capitol quickly, if needed.

9 And so they were all just on standby with their equipment in case something
10 happened that day.

11 Q Okay. Go ahead. Sorry.

12 A So the morning, I, frankly, can't remember what we were working on. I'm
13 sure there were a million things going on. I do recall at some point, late morning, early
14 afternoon, hearing protesters marching down Constitution, going from the Ellipse toward
15 the Capitol. We could hear them chanting and banging drums and things like that.
16 They passed by the Department.

17 And then sometime in the early afternoon, I walked into the DAG's office. He
18 had his television on. You could see that people were in the rotunda of the Capitol.

19 And he said to me, do you see this, do you see what's going on, can you believe
20 this? And that was the first that I learned that the Capitol had been breached.

21 Q Okay. Let me try to stop you there and get a timeframe here.

22 Looking at exhibit 44, we have a 10:43 a.m. email from [REDACTED] who states,
23 "There are no credible threats as of the 10:00 brief."

24 Is that your briefing, or is that a separate briefing?

25 A No. So at this point [REDACTED] is at the SIOC, and the SIOC does periodic briefing

1 every few hours, just like virtually every command center I have ever worked in.

2 So every couple of hours, there's someone in charge of the shift, and they get up,
3 and then they call individuals up who had their own areas of responsibility, and they brief,
4 so everyone knows what's going on.

5 So there was a 10 o'clock brief at the SIOC, and this is part of the readout from
6 that brief from [REDACTED]

7 Q And in that email it says, "There are reports about 18 predicated subjects
8 traveling to D.C., but of those, 6 are now not going to be traveling."

9 The reference to predicated subjects, does that mean cases the FBI had on
10 individuals who might be attending the rally?

11 A Yes. For one reason or another, the FBI was already taking a look at those
12 18 individuals, wholly apart from the rally, and they learned that those individuals would
13 be traveling to the rally.

14 Apparently, six of them decided not to go. So you're talking about at least,
15 according to this report, 12 predicated subjects traveling to the rally.

16 Q Exhibit 45 is an email at 1:57 with, as you said, a SIOC update that [REDACTED]
17 located. I wanted to talk a little bit about this before we move on to the Capitol breach
18 time period.

19 In the first line it says -- and I hope you have the unredacted version there. The
20 FBI --

21 A I do.

22 Q Yes -- has briefed that there are reports of unexploded explosive devices at
23 the RNC.

24 The second bullet says there's also a report of an unexploded device at the DNC.

25 A Yes.

1 Q Now, when did you first hear about these pipe bombs at the RNC and DNC?
2 Was in through this email, or was it through another manner?

3 A I don't think it was through the email. I can't be a hundred percent sure.
4 I think [REDACTED] called me. But it was an extremely chaotic day, and so it's difficult to piece
5 it all back together.

6 But this is not the kind of thing that would just land in an email, we've got pipe
7 bombs in the city. I think [REDACTED] called me. And maybe that's why I went to the DAG's
8 office to tell him. I can't exact exactly.

9 But I do recall being advised that there were pipe bombs found at RNC and DNC,
10 and that ATF was responding to the scene, along with Capitol Police and MPD.

11 Q Are you familiar with where the RNC and DNC are located as it relates to the
12 Capitol?

13 A Generally, yes.

14 Q Is it away from the Capitol, not on the Capitol Grounds?

15 A No, they're not --

16 Q Pardon?

17 A No, they're not on the Capitol Grounds, obviously, but they're only a few
18 blocks away.

19 Q Do you know -- are you familiar with how many people responded to deal
20 with the RNC/DNC pipe bomb situation?

21 A I don't know what the head count was. I knew it was numerous agencies,
22 and I know that ATF was there with the Capitol Police.

23 Q Okay. I'm sorry. Then you -- we can take it from when you went to Mr.
24 Rosen office?

25 A So I went to his office. He had the television on, I don't know what

1 channel, and it was a news channel, and they were showing scenes of people basically
2 walking through the rotunda with flags, and things of that sort. And, obviously, people
3 had gotten into the rotunda who didn't belong there.

4 And he said, you know, I'm trying to get ahold of FBI. I'm trying to find out
5 what's going on. I can't believe this is happening. I can't believe people got in there.
6 Something to that effect.

7 And I watched for a few moments. And I said, you know what, sir? I'll just go
8 over to the SIOC, I'll try to find out what's going on, I'll call you from there.

9 So I left RFK, our headquarters, with my detail, and I went across the street to the
10 Hoover Building, and I went up to the SIOC at FBI.

11 Q Do you have a sense of what time it was when you got to the FBI SIOC?

12 A It's very difficult. I know the sequence of what I did that day. It's very
13 difficult to pinpoint exact times and all this. I think it was around 2 o'clock. But I
14 caution when I make these estimates about the exact time.

15 Q Who did you speak to at the FBI SIOC?

16 A I got there. There were a number of people there. I was looking for Dave
17 Bowdich. I thought he was might be at the SIOC.

18 I asked people what's going on. There was a shift leader. I can't remember
19 exactly who it was, but whoever was in charge of the morning shift. I'm pretty sure
20 [REDACTED] was there. I had brief conversations with a number of people.

21 They didn't have a lot of information. They had the screens showing people
22 marching through the rotunda as well, but they didn't have a lot of information as to
23 exactly what was going on at the Capitol.

24 I asked where Bowdich was. Someone said he left for WFO a few minutes ago,
25 something to that effect. And so I decided I was going to leave and go to WFO.

1 While I was at the SIOC, I do recall someone saying that Capitol Police say they
2 don't need help at this point, they've got it covered. I don't know who that was. It
3 might have been [REDACTED] It might have been someone else.

4 It didn't surprise me because I knew that Capitol Police had more than enough
5 officers to cover the Capitol. And since that was their area of responsibility, I thought
6 that made perfect sense that the Capitol Police were going to push these people out of
7 the Capitol, and that was going to be that.

8 But, again, because I wasn't able to get the answers I wanted with regard to what
9 was actually going on, on the ground, I decided to leave the SIOC and go to WFO and try
10 to get a little bit closer to the Capitol to see what was going on.

11 Q What happened when you arrived at WFO?

12 A En route, I made several phone calls. There were a lot of phone calls in and
13 out that day. So I don't remember them all. And I'm sure some of them are getting
14 conflated in my mind.

15 But I do recall calling Regina Lombardo, and some others. I think I spoke to Don
16 Washington, too, saying, get your guys ready. If the Capitol Police need help, we're
17 sending help right away.

18 And they had previously -- we had previously made clear to them that if they're
19 asked for assistance, they should just deploy. They didn't need permission from me or
20 the AG or anyone else. If a partner asks for help, just send your guys.

21 So there were some phone calls between the SIOC and WFO. When I got to
22 WFO, I went inside. People were in the main command room. There were lots of
23 different partners there. They, too, of course, had the televisions going and people
24 working the phones and shouting out to each other information that they were getting.

25 I asked where Bowdich was. They directed me to a conference room in the back.

1 I went to the back. Dave Bowdich was in the conference room by himself with a phone
2 on the table.

3 He was talking to some FBI leader. I don't know who it was. It was not Director
4 Wray. He was asking that leader, Where are our guys? How many are there? Do
5 they have the equipment? That sort of thing.

6 And he hung up, and we spoke briefly. We decided that it would be better off if
7 we both moved toward the Capitol. Because you're always going to have these lags in
8 information as it gets reported up to a command post. So we thought the best thing to
9 do was for us to both just go to the Capitol and see what was really going on.

10 Q So when you made that decision, you and Mr. Bowdich, is it fair to say that
11 there was no FBI or DOJ component official on the Capitol complex to have provided you
12 information or Mr. Bowdich information?

13 A I don't think there were any FBI agents in the Capitol at that point. I think
14 ATF made it to the Capitol first. And I believe they made it to the Capitol because they
15 were there for the pipe bombs. And so they were close by. And if I understand
16 correctly, part of this is based on conversations I had with ATF leadership afterward.

17 But their guys were at the RNC and the DNC looking at the pipe bombs. And the
18 Capitol Police were there as well. And the Capitol Police heard over their radios that the
19 Capitol had been breached. And they said, you know, we've got to go back to the
20 Capitol.

21 And they turned again running toward the Capitol. And the ATF agents just
22 followed them to provide whatever assistance they could.

23 So I think ATF was the first Federal agency to make it into the Capitol that day.
24 And I do have a recollection of some contact with the ATF leader who was in charge,
25 Ashan Benedict. And I remember talking to Ashan and him saying, I'm already in the

1 Capitol, I'll meet you when you get here.

2 Q I just want to add some context to that time period.

3 According to the Capitol Police official timeline, at 3:07, it states 20 ATF and FBI
4 personnel arrived at the Speaker's lobby.

5 And in addition to that, exhibit 48 has the 3:32 email from [REDACTED] which says,
6 "All FBI SWAT resources in the NCR and agent teams are headed to the Capitol."

7 Now, for kind of those two points, is it consistent with your recollection that the
8 FBI arrived around the 3 o'clock time period?

9 A I believe that Deputy Director Bowdich and I got to the assembly area
10 around 3 o'clock. And in the assembly area, which was on D Street, there were, I would
11 guess, hundreds of FBI agents. Plus others. Capitol Police was there. There were
12 others there.

13 My impression was that the vast majority, if not all, of the FBI agents who
14 participated in this were in the assembly area at that point. ATF was already in the
15 Capitol.

16 I had spoken to Ashan Benedict, who was the special agent in charge of ATF in D.C.
17 I had known him when he was a special agent in charge in New York. And my belief at
18 that time, and I think it's right, is that ATF and Ashan were in there significantly before the
19 3 o'clock arrival at the assembly area.

20 When Bowdich and I went into the Capitol from the assembly area, he took with
21 him a number of FBI agents. I think they were bomb techs. And I think those were the
22 first FBI agents in the Capitol.

23 Q Let me clarify.

24 So then, in your memory, Mr. Bowdich arrived, along with yourself, with the first
25 FBI agents to the scene?

1 And let me just explain why I'm asking. I'm just trying to get a sense of when the
2 first set of folks, apart from ATF, got there?

3 A Bowdich and I traveled from WFO to the assembly area together in the same
4 vehicle. Right? So we arrived at the same time. Again, it's very difficult to estimate
5 the time, but I think it was around 3 o'clock.

6 When Dave Bowdich got to the assembly area, he started talking to some of the
7 FBI leaders who were there. Obviously, they knew who he was. They came up to him.
8 They sort of reported in, sir, I'm so and so, I'm the team leader for this or that, and they
9 began talking to him.

10 I then went and found a Capitol Police officer who could lead us into the Capitol.
11 Bowdich and I then spoke to that guy, and he let us into the Capitol. And Bowdich
12 basically said, you, you, you, you, you, come with me.

13 I think those were bomb techs. And I'm pretty sure those were the first FBI
14 agents in the building, but I could be wrong about that.

15 When we got into the rotunda --

16 Mr. Andres. Those were the first FBI agents you saw in the building.

17 Mr. Donoghue. Right.

18 Mr. Andres. In terms of what you're witnessing.

19 Mr. Donoghue. Yes, right. But I also think, based on the discussions that I was
20 hearing, that those were the first FBI agents in the building. I think Dave Bowdich was a
21 little concerned that FBI agents weren't already in the building.

22 And so when we got into the rotunda, I saw ATF tactical officers in full tac gear
23 with ATF on their backs, helping the Capitol Police. And I also saw U.S. Marshals Service
24 Special Operations Group officers in the rotunda area.

25 So there were a least two other Federal components who were already in the

1 rotunda before Dave Bowdich and I got there.

2 BY [REDACTED]:

3 Q That's helpful.

4 And when you say the assembly area, I think we need for the record, where were
5 you specifically?

6 A It's on D Street. I think it's in my notes that were provided, but I can't
7 remember exact cross street. Maybe it's 1st. Somewhere over there. It's near the
8 Dirksen Senate Building. It's just a large parking lot. It was a predesignated assembly
9 area that everybody went to so that we could tactically move into the Capitol.

10 Q And what happened after you arrived to the rotunda, if you could describe
11 to us what you saw?

12 A We got to the assembly area. We found a Capitol Police officer who could
13 lead us in.

14 That police officer, I think, took us first to Chief Sund's office, the head of the
15 Capitol Police. We checked in with him very briefly. We told him we were going into
16 the Capitol, that we were there to provide whatever assistance we could, that we had,
17 obviously, ATF and FBI and Marshals and other units who were, as he knew, ready to
18 provide whatever assistance they needed. He thanked us. We went on our way.

19 We went into the Dirksen Building. We went through the tunnels and came up
20 somewhere near the rotunda, not directly in the rotunda, but somewhere near the
21 rotunda. And then we moved into the rotunda area where there were hundreds of
22 mostly Capitol Police officers, but other law enforcement as well.

23 I did not see any protestors at that point. You could smell that there had been
24 some chemical agents used, pepper spray or something like that.

25 And I found Ashan Benedict, who was the ATF special agent in charge there in the

1 Capitol. And then he, Dave Bowdich, and I kind of stuck together from that point
2 forward to provide whatever assistance we could to the Capitol Police.

3 Q And you say you did not see any protesters at that time. Is that right?

4 A No, my entire time at the Capitol, I did not see any protesters.

5 Q And that's through the tunnels as well, coming from the --

6 A No, there were no protesters in the tunnel at all. There was a lot of law
7 enforcement.

8 And then when we came up, there was a lot of law enforcement in the rotunda
9 area and in the hallways, the rest of it, but I did not see any protesters.

10 Q I want to turn to exhibit 49 just to get, again, a sense of the timing here.

11 This is [REDACTED] email,

12 "HRT will be fast roping into the Capitol area. FBI will be staging DOJ resources
13 to secure and clear the Capitol."

14 So that's 3:48. And, again, I understand you're estimating the time. In your
15 estimate, you and Mr. Bowdich are already at the Capitol, is that right, by that time?

16 A Yes. Yeah, we were -- I'm present sure we were in there by that time.

17 And you have to keep in mind that what [REDACTED] is reporting out, there's always a
18 time lag. So by the time it worked its way up to the SIOC and he sends an email out, you
19 know, this is somewhat old news. I mean, it's not very old, but there's always a time lag.

20 And so this did not actually happen. The HRT did not fast rope into the Capitol.
21 But this was their plan, obviously, at some point.

22 Q Now, before we get into some of the steps you personally took at the
23 Capitol, I just want to turn to exhibit 50 to discuss briefly this DOD statement that was
24 issued.

25 I believe around 4 o'clock, in the middle of page there, it says, "The D" -- this is a

1 DOD statement -- "The D.C. Guard has been mobilized to provide support to federal law
2 enforcement in the District. Acting Secretary Miller has been in contact with
3 Congressional leadership, and Secretary McCarthy has been working with D.C.
4 government. The law enforcement response will be led by the Department of Justice."

5 Now, I understand you probably were not aware of the DOD fleet, or whatever
6 official statement this was. Did you learn of this statement by DOD at any time on
7 January 6th?

8 A No, I didn't learn of this until I was preparing for this interview.

9 Q Were you in touch with Mr. Miller or Mr. McCarthy at any point on
10 January 6th?

11 A I believe I received a call from Mr. McCarthy while I was at the Capitol,
12 where he reported that they were sending National Guard, and they reported that out to
13 the Acting Attorney General.

14 Also, they were on phone calls that took place later that evening while I was still in
15 the Capitol and trying to provide situation reports to the Vice President and congressional
16 leadership, amongst others.

17 Q Can you just talk about who specifically you remember speaking to as far as
18 congressional leadership is on January 6th?

19 A There were a lot of calls that day, but two specifically that I remember, there
20 was an 1800 call and a 1900 call. So 6 p.m., 7 p.m.

21 The 7 p.m. call, I know, had at least Senator Schumer, Speaker Pelosi, Mr.
22 McCarthy from the House, Senator McConnell, the Vice President, General Milley,
23 Secretary Miller, I think the White House Chief of Staff. I'm pretty sure White House Pat
24 Cipollone was also on that call.

25 Q It's exhibit 54, Mr. Donoghue, that -- it talks about this call. Is that right?

1 A Yeah, yeah, yeah. I am looking at it, but, you know, I didn't detail all the
2 actual people participating.

3 But that's what I remember off the top of my head. I'm sure there were others
4 on this call.

5 Q We can skip ahead to this call then. I think the next page goes
6 through -- well, did you provide the briefing, essentially, to the congressional leadership
7 on that call?

8 A Yes, I did.

9 Q And apart from this 1900 call that's in exhibit 54, did you receive any calls
10 directly from any congressional leaders before this or after this?

11 A Not congressional leaders, no.

12 Q From any White House officials?

13 A Yes, I definitely received calls throughout the day. There were a lot of
14 them.

15 But I do recall specifically getting a call from the White House Chief of Staff while I
16 was en route between WFO and the assembly area. I think Pat Cipollone was also on
17 that same phone call. And I believe I received at least one separate phone call from Pat
18 Cipollone as well.

19 And I spoke to the Acting AG a number of times throughout the day, obviously,
20 updating him on what I was learning and what I was doing next, and that sort of thing.

21 But it was a very, very hectic afternoon.

22 Q Sure. The call from Mr. Meadows while you were en route to the Capitol
23 or to the assembly area, just in substance, can you tell us what that conversation was?

24 A Yes. I got the call on my cell phone. I answered it. It was, I believe, the
25 Chief of Staff and the White House Counsel.

1 And the Chief of Staff said, essentially, I understand you're on your way to the
2 Capitol.

3 I said, yes, sir. I'm with Bowdich now. We should be there in a few minutes.

4 And he said something to the effect of the President wants this situation brought
5 under control. When you get over there, you need to take charge of the Federal
6 agencies. You need to get that place cleared out and operational as quickly as possible.

7 That's not a quote, but that was the gist of what he told me.

8 And I said, basically, yes, sir, I understand that, we'll be there in a few minutes,
9 and we'll clear the place, and we'll get it operational.

10 Q Do you have any idea how he knew you were on the way to the Capitol?

11 A I assume that the DAG told him. I was keeping the DAG -- I wasn't going to
12 do these things on my own. He's my boss. So I was calling him and saying, hey, look,
13 I'm going to go to the WFO now. I'm going to go to the assembly area and all that.
14 And he was in agreement with all that. So he knew where I was going, and he must
15 have -- I assumed he told the Chief of Staff.

16 Q Is that the only call you remember directly with Chief of Staff Meadows?

17 A Yes. I know there was at least one other one with Pat Cipollone, but the
18 Chief of Staff may have been on there, I just don't remember.

19 Q And do you remember the nature of the call -- of the conversations with Mr.
20 Cipollone?

21 A He said something to the effect of there are a lot of calls going on, but there
22 are very few people who are close to what's actually happening on the ground. So if you
23 can be on these calls, it would be extremely helpful.

24 And so if you can make these calls, I know, you know, they're showing up on your
25 calendar or coming in emails and things like that, please try to pay attention to them.

1 What you are doing there is more important. But if you can spare the time, get on these
2 calls so we can hear directly what's going on, on the ground.

3 That might have --

4 Q Is that what led to you --

5 A That might have been before the Chief of Staff called in the car. I can't
6 really remember.

7 Q And is that what led to you, essentially, leading the 18 -- the 1900 call?

8 A Yes. Both the 1800 call and the 1900 call, I was told in advance, at least in
9 one case by the DAG himself, that you're the senior official on the ground in terms of
10 civilian executive branch agencies. And, therefore, when we start this call, we're going
11 to turn it over to you to brief up what the situation is on the ground. And I did that both
12 in the 1800 and 1900 calls.

13 Q And I just want to turn to the page of your handwritten notes where you
14 state: Prepped for the 1800 call.

15 A Right.

16 Q Sorry, we've gone a little bit out of order, but it's completely fine.

17 So we talked about the 1900 call, and you told us what leadership was on that call.
18 I want to clarify in your notes for the 1900 call, it says POTUS and VP.

19 Was the President on that call?

20 A No, I never spoke to the President that day. He was not on any calls that I
21 was on.

22 Q Was there any attempt by the President to contact you that day?

23 A Not that I'm aware of.

24 Q Did you later learn that the President attempted to call you that day after --

25 A No. On January 6th? No, I never heard that the President tried to contact

1 me on January 6th.

2 Q And apart from Mr. Cipollone and Mr. Meadows, did any White House
3 official attempt to call you directly on January 6th?

4 A No. We had a call from the Situation Room, so that was operated out of
5 the White House, but there were no other officials reaching out to me that I'm aware of.

6 Q Who was in the Situation Room at the White House? Do you remember?

7 A I don't. This call, this 1800 call, this did not have the congressional
8 leadership on it. And I don't believe the Vice President was on that call either. It was
9 more of, I think, a law enforcement-level call.

10 Q If we could just go through what you briefed them on in that 1800 call, that
11 would be helpful.

12 A So these notes I have in exhibit 54 titled Prep for 1800 Situation Room Call, I
13 made these notes to myself a few minutes in advance of the 1800 call because I wanted
14 to make sure that I covered each of these points.

15 So I made this list with Dave Bowdich and Ashan Benedict and some of the Capitol
16 Police officers with me to make sure I wasn't missing any key information.

17 I ran through the list. I prepared it. When the 1800 call started out of the
18 Situation Room, they turned it to me first. That's why I have the first entry there as,
19 "See call prep notes." And I, essentially, read this list, and I briefed them on what the
20 situation was.

21 And then the call continued from there with other people chiming in about
22 perimeter fencing. General Hokansen, H-o-k-a-n-s-e-n, talked about the D.C. National
23 Guard role and things like that.

24 Q Before we move on from the 6 p.m. and the 7 p.m. call on January 6th -- and
25 just so I'm clear, you're still at the Capitol at that time. Is that right, Mr. Donoghue?

1 A Yes. I left the Capitol shortly after 8 p.m. I waited to make sure that the
2 Senate was back in session. They gaveled back in just a few minutes after 8. And once
3 they were back in session and everything was operational, I then left.

4 Q Just as a question about how your role came to be so that these calls, was
5 it -- Mr. Bowdich was still with you at that time, correct?

6 A Yes, he was with me throughout.

7 Q Was there any sense that given his capacity as number two at the Bureau,
8 that he would be the security and operational person in charge at that time versus
9 yourself?

10 A No. He was certainly in charge of the FBI assets that were there. But
11 what we did, essentially, was as soon as Bowdich and I got to the rotunda and linked up
12 with Ashan Benedict, we asked for the senior Capitol Police officer on scene.

13 We were put in contact with him there in the rotunda. I explained who I was.
14 And I said we have ATF, we have FBI, we have marshals, we have whatever you need.
15 Tell us what you need to get this building cleared and operational. And then he asked
16 for certain specific things.

17 Pursuant to his request, we did that. We sent FBI toward one Chamber, ATF to
18 another Chamber to work with the Capitol Police to clear the Chambers.

19 And then he, if you guys can help clear the Chambers, we, the Capitol Police, will
20 clear the hallways and the offices and the closets and all that stuff.

21 Because we wanted to make sure of two things. One, there was no one left
22 behind hiding in a closet or some other place. And, two, that there were no devices left
23 behind like a pipe bomb left in the Senate Chamber.

24 So that was the immediate goal in terms of clearing the facility. And we made
25 our people on scene available to the Capitol Police, and they appreciated that, and they

1 used them, and that was it.

2 Q How many hours in total do you estimate you were at the Capitol?

3 A About 5 or so.

4 Q Before kind of go back to some emails that were received, does anybody
5 have any questions?

6 Ms. Cheney?

7 Ms. Cheney. Thanks. [REDACTED] are you going to walk through Mr. Donoghue's 7
8 o'clock call, the 1900 call, just to get -- I see the note in the exhibit 54.

9 [REDACTED]. Uh-huh.

10 Ms. Cheney. Just to get some specifics about what messages that were on that
11 call.

12 Sorry, just to clarify. The notes say that POTUS was on the call, but I think Mr.
13 Donoghue just said that's not the case?

14 Mr. Donoghue. Right. And I think what I was doing there, I was taking notes
15 during the call. And someone at some point said something about the President. I
16 think they were going to relay something that the President said or some directive or
17 something like that.

18 And I wrote POTUS, because I was going to relay whatever the instructions were.
19 And then when I heard them, it sounded like to me it was something I had heard
20 previously.

21 So whether it was the Chief of Staff or someone else saying the President wants
22 the situation brought under control, I think that's what it was, but I'm not a hundred
23 percent certain.

24 I am a hundred percent certain that the President was not on the call. You know,
25 looking back at the notes, obviously, I was kind of racking my brain a little bit as to why

1 did I write POTUS. But I think that was the reason. You know, someone said the
2 President something, and I began writing POTUS, and then I stopped.

3 So I apologize for the confusion there. But the President was definitely not on
4 that call. And the Vice President definitely was because he asked several questions.

1

2

BY [REDACTED]:

3

Q Where did you conduct the call?

4

A From -- as you can see at the top, it says HR 228. That's the office number

5

that we were in.

6

I was in the rotunda. My detail guys could hear that we were planning calls in

7

the rotunda, because of the echo. It was not a good place to do a call. And so my

8

detail guys said, we'll go find you a quiet place to make these phone calls. And then

9

they came back and they led me to 228.

10

Q Do you know where the Vice President was at that time?

11

A I don't know exactly, but after this call I learned that he was in the

12

Capitol -- wherever his office is, I don't know offhand where that is -- and I went there.

13

Someone led me to the Vice President's office, and there were some officers

14

stationed outside. I said who I was, and we were just there in case there's anything, any

15

sort of assistance we could provide.

16

His Chief of Staff came out. I said, look, we were just on the call, you know, I

17

understand the Vice President's here, do you guys need anything at all? And he said, no,

18

thanks, we got it.

19

And that was it. I never saw the Vice President. I never spoke to him aside

20

from the phone call. I just saw his Chief of Staff.

21

Q Did it surprise you that he was still in the building?

22

A No, not really.

23

Q To Ms. Cheney's point, could you just go through that 1900 call, what you

24

touched upon in that call?

25

A It was similar to the 1800 call in that I was telling them that the building is

1 cleared but not fully secured. You know, there were still protesters on the grounds
2 outside. That we were in the process of sweeping the building. That ATF had taken
3 one Chamber. They were working with Capitol Police to clear the Chamber. FBI took
4 the other Chamber. They were working with the Capitol Police. The Capitol Police
5 were working on all the offices, the hallways, the restrooms, and everything else to make
6 sure that no one was hiding, and that there were no dangerous devices left behind.

7 I said in that call that we believed that we could get the entire place operational
8 by 9 p.m. Senator Schumer then said, well, we want to be in at 8 p.m. Can we do this
9 by 8?

10 And I looked at the FBI, ATF, and Capitol Police leadership and kind of gave them a
11 thumbs up, like questioning, can we do it by 8? I thought we could. And they all sort
12 of nodded, yes, we can do it by 8.

13 So I said, yes, sir, we can do it by 8.

14 I think the Vice President then chimed in and said, can you do it safely by 8?
15 Meaning -- I took it to mean he didn't want any law enforcement officers endangered by
16 rushing the schedule?

17 And I said, yes, sir, we can do it by 8, we can do it safely, that'll be fine.

18 There was some other questions. Frankly, I just -- I don't remember them, of
19 course. I have a notation that Room 137 -- Speaker Pelosi asked about Room 137. I
20 didn't know what she meant by that.

21 I said, I apologize, Madam Speaker, I don't know the building well enough to know
22 what 137 is. And someone said, it's the dining facility. And, apparently, she wanted to
23 know if the dining facility would be up and operational, because she said that the
24 Members would need food throughout the night.

25 And I said that we would try to find out further, that I have no idea if the dining

1 facility would be operational, and it would be probably prudent for Members to bring
2 some food with them if they were going to spend the night.

3 Q So just to go through your notes on who else was on the call, you have the
4 Acting AG, you have a note, DOD.

5 Do you remember who from DOD was on the 1900 call?

6 A General Milley was on that call, because he asked a few questions as well.
7 Secretary Miller was on that call. I believe Secretary McCarthy, Army Secretary
8 McCarthy was on that call. I don't remember who else.

1

2 [4:47 p.m.]

3

BY [REDACTED]

4

Q And the next line is Chief of Staff Meadows. Is that right?

5

A Yeah, I guess that's right. I don't remember writing that, but it does say

6

"chief of staff," so I guess Chief of Staff Meadows was on that call.

7

Q Do you remember if there were any questions -- it looks like he was on the

8

1900 call but not on the 1800 call. Is that correct?

9

A That's possible. My recollection is that the 1800 call was more DOD and

10

law enforcement, talking about where are we, is the building clear, how long will it take

11

the building to get clear, are we going to be able to secure the perimeter, things like that.

12

And the 1900 call was more toward the political leadership about when they can get back

13

to work.

14

Q Do you remember if there were any questions posed by Mr. Meadows

15

during that 1900 call?

16

A I don't remember that.

17

[REDACTED] Ms. Cheney, did you have any additional questions before I

18

move on to the 1800 call?

19

Ms. Cheney. Mr. Chair, thank you.

20

Did anyone on the call ask or address the question of why the President had not

21

been involved in the call?

22

Mr. Donoghue. No, not that I recollect.

23

Ms. Cheney. So there was no discussion about the lack of the President's

24

involvement?

25

Mr. Donoghue. No. There was no discussion about why the President's not on

1 the call. Again, I have POTUS written there and the Chief of Staff is on this call. I
2 think -- this is a vague recollection, but I think he made some representation about what
3 the President wanted to happen, and I think it was in line with what he had told me
4 earlier that afternoon, and that's why I didn't write anything more about it.

5 Ms. Cheney. Okay. Thank you.

6 BY [REDACTED]:

7 Q Turning to the 1800 call, your notes, I just wanted to go through number five
8 and number six.

9 A Yes.

10 Q Can you read that for us?

11 A Number five says: This may have to be sustained through approximately
12 the 27th -- that was General Milley saying that -- thinks will need approximately 6,000
13 National Guard to maintain the perimeter through that date.

14 Number six says: Adjacent police forces - all are on standby or already helping.
15 Those were police departments in Virginia and Maryland and places like that.

16 Q General Milley's suggestion, was that -- takes you up to the date of the
17 inauguration? Is that the 27th?

18 A It would take us a week after the inauguration. So it seemed to me he was
19 planning the inauguration plus a week, seemed to be what he was planning for, thinking
20 might be necessary.

21 Q And number -- under number four, if you could just read the notes that you
22 have on the side there.

23 A So the title of that block is "D.C. National Guard," and on the left, I have:
24 General Hokansen -- H-o-k-a-n-s-e-n. He's from the National Guard Bureau in the
25 Pentagon. I believe he's the Commander of the National Guard Bureau. I think that

1 says: VA, Virginia; PA, Pennsylvania; and other States would make National Guard
2 troops available, if necessary. I think that's what that note means.

3 Major General Wagner, also reflected in that same bullet, is the Commander of
4 the National Guard for Washington, D.C. He is reporting that they had 154 on scene,
5 and then he gave some other details about how long it would take to get additional
6 National Guard forces there.

7 And I should point out that I never saw the National Guard there, but I didn't go
8 outside. I was in the building throughout. And, when we got to the rotunda and we
9 met with that Capitol Police officer, and I said, "This is what we have available, what do
10 you need," and he made his requests, he said: National Guard is coming too, but when
11 they get here, we're going to put them on the perimeter, free up some of our guys.

12 And that made perfect sense. So my understanding was, as they arrived, they
13 were going to be put on the perimeter. So, since I didn't go outside and walk the
14 perimeter at that point, I didn't expect to see any National Guard, and I didn't.

15 Q Who was the Capitol Police leadership that became your point of contact on
16 the site?

17 A It was a lieutenant in the rotunda whose last name started with an S. I
18 apologize. It escapes me right now. But, when I asked for the ranking Capitol Police
19 officer, I was led over to this individual. I said: Are you in charge of the Capitol Police
20 here?

21 He said: I'm Lieutenant So-and-So. I'm in charge of our tactical units.
22 Basically we're running this operation at this point.

23 I said: Fine. This is who I am. This is who David Bowdich is. This is who
24 Ashan Benedict is. This is what we have for you. I know you guys know we've had
25 these resources, but what he needs to do right now to fix this, and then he asked for

1 specific assistance that we gave him.

2 Q Was that the same lieutenant who was on the 1900 call when you referred
3 to Capitol Police leadership was on that call?

4 A I think he sent one of his guys. I don't think he was sitting with us. I think
5 he sent one of his assistants with us to sort of shepherd us around because he was taking
6 care of his tactical units who were still very engaged at that point.

7 Q I just want to go back in time a little bit, and then we are wrapping up for my
8 portion here. But to go back to exhibit 51, I just wanted to get some confirmation on
9 some email traffic that was going on that day. Exhibit 51 is an email between Mr. Engel
10 and Mr. Rosen where you're cc'd.

11 Mr. Rosen says to Mr. Engel: We may need your input on whether any
12 deputizations are needed and perhaps who has the authority to authorize the National
13 Guard for the Capitol.

14 Hadn't that question already been cleared up prior to January 6th with the
15 communications with DOD?

16 A So the mayor had requested 350 National Guard, and that had all been
17 approved. So those National Guard forces were on the streets of D.C. The problem
18 was, when you then move them to the Capitol, it's a different situation. So, again, the
19 Capitol Police have sole authority over the Capitol. We couldn't even send forces there,
20 FBI agents or otherwise, without their permission. They have sole jurisdiction and
21 authority over the Capitol.

22 Moving -- the mayor herself doesn't have the authority to move the National
23 Guard on to the Capitol grounds. So that's got to be done pursuant to a request by the
24 Capitol Police. In order to protect Guard members, it was probably necessary for them
25 to be deputized because, again, they don't have inherent authority to do law

1 enforcement. They can direct traffic. They can do all kinds of things. But if they've
2 got to place someone in custody, actually make an arrest on Capitol grounds, they've got
3 to have law enforcement authority to do that.

4 So that's what the DAG was concerned about, and that's what someone like Steve
5 Engel can give you guidance on, because we didn't want to put these guys in a terrible
6 situation where they now arrest someone because they're doing the right thing and
7 suddenly they've got personal liability because they weren't deputized and, therefore,
8 didn't have the law enforcement authority to make an arrest.

9 As these emails were flowing that afternoon, I've got to tell you, I didn't see a lot.
10 So, you know, the fact that there were emails coming through, I certainly wasn't staring at
11 my phone reading every email as it came in. So I've seen them after the fact, but a lot of
12 these I didn't see at the time.

13 Q Do you know if anyone was ultimately deputized on that day, on
14 January 6th? I understand later they were.

15 A I don't remember. I know we deputized them for the inauguration, for
16 these very same reasons.

17 Q Exhibit 52 is a 4:27 outgoing email from yourself saying: 250 National
18 Guard are heading to the Capitol, as per Secretary Army.

19 Was that a direct conversation you had with Mr. McCarthy?

20 A I think so. I only have the vaguest recollection of this, but I think what
21 happened was the Secretary of the Army called my cell phone. He said: I understand
22 you're on the ground. Just wanted to give you an update. We've got 250 National
23 Guard guys headed there now.

24 I said: Great.

25 I think I told him: Yeah. The Capitol Police said they're going to put your guys

1 on the perimeter. That makes sense.

2 And he said: Fine.

3 It was a very short phone call, and I have only the vaguest recollection of it at this
4 point.

5 Q And, just so we're crystal clear on this DOD versus DOJ kind of narrative
6 about the designation of the lead Federal agency, at no point did Mr. McCarthy or
7 Mr. Miller or anyone from DOD, well, did they ever defer to you that day, in your role that
8 you took on, or did they ever inform you, "Oh, I heard DOJ is the lead Federal agency
9 now"?

10 A No. No one said that, and I didn't tell them that. And I didn't take what
11 the chief of staff said in that phone call to mean that I should be moving troops around
12 the Nation's Capital. I just never -- you know, when he said, "You're in charge of the
13 Federal agencies," I did not take that to mean National Guard.

14 And I knew that I had no authority, even with the blessing of the chief of staff or
15 the President himself, to take control of the Capitol Police or the Metro PD. So I wasn't
16 going to get into that discussion and debate with the chief of staff at that point. I was
17 confident that we could make the situation happen or the situation resolved.

18 But I did not tell anyone, aside from Dave Bowdich, that the chief of staff had
19 given those instructions at that point. It was not necessary. It was going to confuse
20 things. The Capitol Police were in charge of the Capitol no matter what the chief of staff
21 said, and they were more than happy to have the help. So there was no need to bring
22 that up with the Capitol Police, DOD, or anyone else.

23 Q I think that wraps up my portion.

24 I just have a couple questions to round it out. But, at any point on January 6th or
25 prior to, did you sense any resistance from any DOD official to respond on that day,

1 starting with January 6th, in terms of authorizing the D.C. National Guard to arrive?

2 A No. I didn't -- I didn't sense any resistance. I sensed, prior to January 6th,
3 a great reluctance by General Milley to have the military involved any more than is
4 absolutely necessary, and I thought that was appropriate, and we were all in agreement.
5 But, on January 6th, I didn't hear anything about any reluctance.

6 I know there was some complaints afterwards about delays and things of that
7 nature. You'd have to talk to them about it, but I think those delays were driven by the
8 fact that the mayor insisted that the Guard be unarmed and that they not have body
9 armor. And so, when they were asked to assist, they then had to go back to the armory
10 so that they were appropriately equipped, and that took some time. I think that's what
11 accounted for the delay, if there was a delay.

12 Q Did you sense any resistance from any White House official on January 6th in
13 terms of responding to the Capitol that day?

14 A No. It was the opposite. There was a certain amount of urgency clear in
15 the phone calls and the communications from both the chief of staff and the White House
16 counsel basically saying: Get over there and fix this.

17 Q What's the single most -- what do you attribute as the single most -- biggest
18 failure of that day in terms of securing the Capitol? Who do you attribute that to?
19 What do you attribute that to?

20 A The Capitol Police failure to maintain the perimeter. I mean, there were
21 certainly heroic acts by the Capitol Police that day. I would never undercut what those
22 individual officers did, but there was a complete failure of planning and leadership.

23 There's no reason they should have gotten in that building. The Capitol Police
24 had more than enough manpower. They were the agency that was best equipped and
25 best positioned to defend the Capitol. Everyone knew that the Capitol was at risk.

1 Everyone knew that there were going to be thousands of angry protesters showing up at
2 the Capitol. Certainly, no one anticipated this type of breach, but you plan for the
3 worst, and the Capitol Police should have planned for the worst, and they should have
4 been prepared to defend that perimeter.

5 And, to this day, I'm completely shocked that they were unable to do so, because
6 they had the manpower to do it. Why they failed to do so, I don't know. And, again,
7 that doesn't take away in any way, shape, or form from the heroic acts of those individual
8 officers, but there's a leadership failure there. And it doesn't shift blame off the
9 individuals who committed crimes to get into that building; that's entirely on them, and
10 that's disgraceful criminal conduct. But they should've been able to hold that
11 perimeter. I don't know why it didn't happen.

12 Q How much responsibility, if any, do you put on the intelligence community
13 for not issuing any specific warnings about January 6th?

14 A I think there were a lot of specific warnings about January 6th. I think that
15 the Capitol Police certainly knew about threats. They knew that the Capitol was a
16 target, just as we knew that the Department itself was a target, the White House was a
17 target, Lafayette Square was a target. There was lots of targets all over D.C. that day.
18 The Capitol was one of the obvious ones.

19 And intelligence was shared. I'll leave it to Director Wray and others to talk
20 about exactly what intelligence was shared at what points in time and all of that. But
21 you didn't need an intelligence report to know that thousands of angry people were going
22 to be showing up at the Capitol that day who were upset about the election and who
23 wanted to disrupt the congressional proceedings that day. And Capitol Police should've
24 been prepared to handle that. I think they had the personnel. I think they had the
25 intelligence. I'm not sure why it went the way it did.

1 Q So you don't think an issuance of a joint intelligence bulletin by the Bureau
2 or DHS could've -- would've impacted the security planning of the Capitol Police?

3 A Again, I'll leave it to others to do the postmortem on this, but I think there
4 was plenty of intelligence, whether it came from FBI, DHS, MPD, or others, as to what we
5 were looking at here. And it wasn't a surprise to anyone that thousands of angry people
6 showed up at the Capitol that afternoon. It certainly wasn't a surprise to the Capitol
7 Police.

8 [REDACTED] I don't have anything else.

9 Ms. Cheney, do you have anything on -- and then I can shift.

10 Ms. Cheney. Oh [REDACTED], I have some questions on some other issues. Were
11 you all done? I'm happy to go ahead with those or --

12 [REDACTED] I'm done. I'm going to turn it over to [REDACTED] at this point
13 or to you, but my portion is finished. Thanks for your time.

14 Mr. Andres. Please, could we just take -- like just give us 1 minute. We don't
15 have to go off camera. Let me just -- okay. Sorry. Sorry. Go ahead.

16 [REDACTED] Ms. Cheney, you can go ahead while we do some camera
17 shifting here.

18 Ms. Cheney. Okay. I'm not sure what topics [REDACTED] is covering. Mr. Donoghue,
19 were you aware -- did it come to your attention at any time on January 6th or after that
20 there were any discussions going on on the 25th Amendment?

21 Mr. Donoghue. No. There were no discussions regarding the 25th
22 Amendment, to my knowledge, my entire time in Washington.

23 Ms. Cheney. And, with respect to the Insurrection Act, between the election and
24 January 20th, were there discussions about the possibility of the President invoking the
25 Insurrection Act that you became aware of?

1 Mr. Donoghue. I don't believe so, no.

2 Ms. Cheney. And then, with respect to martial law, what's the impression -- did
3 you become aware at any time that there were any discussions about the implication of
4 martial law, whether in conjunction with [inaudible] ballot boxes or anything else
5 [inaudible].

6 The Reporter. Ms. Cheney, your audio cut out. Can you please repeat that?

7 Ms. Cheney. Yes. With respect to martial law, did you become aware at any
8 time of any discussions in that same time period that the President might be considering
9 declaring martial law or asked for your views on the topic?

10 Mr. Donoghue. No. There was never any mention or discussion of that.

11 Ms. Cheney. So your -- the seizing of the ballot boxes that you mentioned and
12 [inaudible] sent to the Oval Office was [inaudible] ballot boxes, there was no
13 discussion about the mechanics of doing so?

14 Mr. Donoghue. I'm sorry, ma'am. You're breaking up.

15 Ms. Cheney. Sorry. The question was about the discussion that you
16 mentioned, Mr. Donoghue, in the Oval Office about the seizing of ballot boxes. Was
17 there a discussion --

18 Mr. Donoghue. Yes.

19 Ms. Cheney. -- or any discussion with that about the mechanics for doing so?

20 Mr. Donoghue. The President made some comment about: If you would seize
21 these machines, I am sure you'd find evidence of criminal conduct.

22 He seemed to think that we had some administrative role supervising State
23 elections. And, again, we explained to him that that's not our role and we have no
24 authority to seize State election machines. And then Ken Cuccinelli reiterated that.

25 I didn't -- that had nothing to do with martial law or anything of that sort, but the

1 President seemed to believe that we had the authority administratively just to do that,
2 and we explained to him that we did not, and then he moved on.

3 Ms. Cheney. Okay. Thank you.

4 Mr. Andres. Hi. Sorry, I'm not sure what's next. We were going to talk about
5 the election fraud, January 6th. We were going to go from 10:00 to 4:00. It's 5:08, so
6 just so we're -- what's left?

7 [REDACTED]. Hi, this is [REDACTED]. I'm senior counsel to Vice Chair
8 Representative Cheney. I just have a few small questions.

9 Mr. Andres. Great.

10 [REDACTED]. It'll probably be less than 10 minutes.

11 Mr. Andres. No worries.

12 BY [REDACTED]

13 Q Going back to your discussion with the Assistant Attorney Generals and what
14 they would do if the President replaced Acting Attorney General Rosen with Jeff Clark,
15 you mentioned that you said that you hoped that John Demers would stay on, and
16 then -- but when they actually decided -- told you what they would do, did he say that he
17 would resign as well, or did he say that he would stay on?

18 A John did not respond. I think he and everyone else on the call took that as
19 me saying he should not resign, you know, unless he said otherwise. I think the
20 presumption would've been, absent John putting up his hand and saying, "No, I am going
21 to resign," I think everyone understood that John would stay in place.

22 Q Okay. Great. And just last question, I don't know if you've seen -- there
23 was recently a memo from John Eastman that was published pretty widely. Are you
24 familiar with that? It discusses January 6th scenarios and the Vice President's
25 constitutional role on that day. Are you familiar with that at all?

1 A I've seen some media accounts of that, but I did not read the memo.

2 Q Okay. And is it the case then that you didn't see that -- that memo was
3 never shared with the Department of Justice while you were there, to your knowledge?

4 A No. Not at all.

5 [REDACTED] Okay. Those are all the questions I have.

6 [REDACTED] All right. Let me just look around the room and make sure there's
7 nothing else.

8 [REDACTED] anything else?

9 Ms. Cheney, are you also -- any other questions on your mind before we go off the
10 record?

11 Ms. Cheney. No. I'm set. Thank you.

12 [REDACTED] -- Okay. All right.

13 Well, Mr. Donoghue, I think that concludes it. I know we went beyond -- I should
14 never estimate times. I apologize for keeping you longer than expected. But I really
15 appreciate your candor, your patience with us today, your willingness to, yet again, sit
16 down and go through this. It's important to the select committee to get the facts and to
17 talk to people who were at the center of things as you were. So thank you very much
18 for doing this.

19 The next step is for the court reporter to provide us with a transcript. We will
20 then send that to your attorneys. You will have a chance to look it over and to make any
21 clarifications, corrections to make sure it's accurate. We want to make sure that it
22 accurately captures the questions and answers today. And that should happen here
23 pretty quickly.

24 And then, again, I'll stay in touch with Greg, with your lawyer, about whether
25 there's anything else we need.

1 Mr. Donoghue. Okay. Well, my thanks to the committee, the staff, the
2 Department attorneys who have been on all day, as well as the Davis Polk team here, who
3 did a great job preparing me.

4 If we can provide further information in the future, let us know.

5 [REDACTED] Okay, Mr. Donoghue. Thanks again. Really, really appreciate it.
6 Brad and Kira and everybody at DOJ, thank you as well.

7 Mr. Andres. Thanks.

8 [REDACTED] All right. Thank you.

9 [Whereupon, at 5:14 p.m., the interview was concluded.]

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Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date